



REGULAR MEETING OF THE SAN MARCOS PLANNING AND ZONING COMMISSION

Tuesday, June 22, 2010, 6:00 p.m.

Council Chambers, City Hall

630 E. Hopkins Street

Sherwood Bishop, Chair
Bill Taylor, Vice-Chair
Randy Bryan, Commissioner
Bucky Couch, Commissioner
Jude Prather, Commissioner
Curtis O. Seebeck, Commissioner
Jim Stark, Commissioner
Chris Wood, Commissioner
Travis Kelsey, Commissioner

AGENDA

1. Call to Order.
2. Roll Call.
3. Chairperson's Opening Remarks.
4. **NOTE:** *The Planning & Zoning Commission may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Planning and Zoning Commission may also publicly discuss any item listed on the agenda for Executive Session;*
5. Citizen Comment Period.
6. **CUP-10-12.** Hold a public hearing and consider possible action on a request by Chase Katz for a Conditional Use Permit to allow on-premise consumption of mixed alcoholic beverages at 336 W Hopkins Street.
7. **CUP-10-13.** Hold a public hearing and consider possible action on a request by Jonathan Ellis, for a Conditional Use Permit to allow a hookah bar (smoking lounge) in a Community Commercial (CC) zoning district at 700 N LBJ Drive, Suite 113.
8. **CUP-10-14.** Hold a public hearing and consider possible action on a request by Sean Greenberg, on behalf of Plucker's Wing Bar, for a renewal of a Conditional Use Permit to allow the on-premise consumption of mixed alcoholic beverages at 105 N IH 35.
9. Hold a public hearing and consider action on amending the Land Development Code to include a provision establishing a new Section 4.2.2.9 entitled San Marcos SmartCode and Transect Zones.

10. Hold a public hearing and consider action on a future land use map amendment for an area generally bounded by Oscar Smith Drive, Lindsey Street, University Drive, CM Allen Pkwy, I-35, Dixon Street, Brown Street, Kasch Street and Burt Street from Mixed Use, Open Space, Industrial, Public and Institutional, Heavy Commercial, Neighborhood Commercial, Commercial, High Density Residential, Medium Density Residential, and Low Density Residential to G4(Growth Area 4), G3(Growth Area 3), O1(Open Space 1), or O2(Open Space 2).
11. Hold a public hearing and consider action on a zoning change for an area generally bounded by Oscar Smith Drive, Lindsey Street, University Drive, CM Allen Pkwy, I-35, Dixon Street, Brown Street, Kasch Street and Burt Street from MF-24 (Multi-family), SF-6 (Single Family Residential), D (Duplex), TH(Townhouse Residential District), SF-4..5 (Single Family Residential), PH-ZL(Patio Home-Zero Lot Line), PDD (planned development District), P (Public and Institutional), OP(Office Professional), NC(Neighborhood Commercial) , MU (Mixed Use), MR(Manufactured Home Restricted), MF-18 (Multi-Family), MF-12 (Multi-Family), LI (Light Industrial), HI (Heavy Industrial), HC (Heavy Commercial), GC (General Commercial), D (Duplex), CC (Community Commercial), CBA (Central Business Area) to T1 (transect 1), T2 (transect 2), T3 (transect 3), T3.5 (Transect 3.5), T4 (Transect 4), or T5 (Transect 5).
12. Hold a public hearing and consider revisions to the following sections of the Land Development Code: Section 1.6.1.3 Platting Exemptions, Section 1.6.6.6- Maintenance and Warranty of Improvements, Table 4.1.6.1, Land Use Matrix, Section 5.5.1.1 Tree Preservation Standards, Section 6.7.2.1 Lot Size Minimum, Section 6.4.2.1 Noise Ordinance, Section 6.2.1.1 Off Street Parking Standards, Section 4.5.3.7 Special Exception Requirements, Section 7.4.2.3 Sidewalk Requirements, Section 7.4.1.4- Street lighting requirements, Chapter 5 Water Quality Standards and Chapter 8 Glossary.
13. Hold a public hearing and consider action on a proposed Pro-Rata Assessment Ordinance.
14. **Discussion Items.**

Commission members and staff may discuss and report on items related to the Commission's general duties and responsibilities. The Commission may not take any vote or other action on any item other than to obtain a consensus regarding items that will be placed on future agendas for formal action.

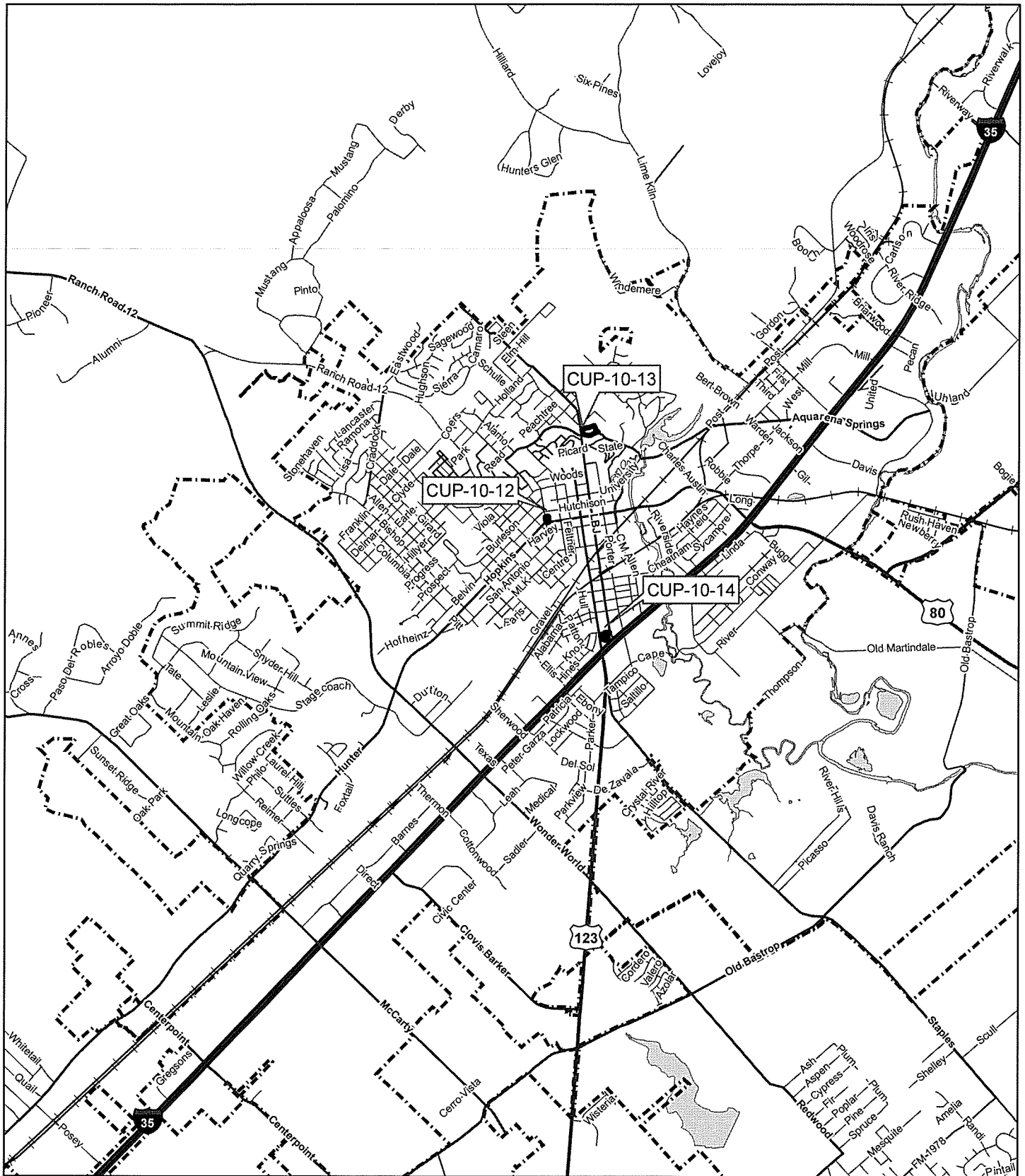
Planning Report

Commissioners' Report.

15. Consider approval of the minutes from the Regular Meeting on June 8, 2010.
16. Questions from the Press and Public.
17. Adjourn.

Notice of Assistance at the Public Meetings:

The San Marcos City Hall is wheelchair accessible. The entry ramp is located in the front of the building. Accessible parking spaces are also available in that area. Sign interpretative for meetings must be made 48 hours in advance of the meeting. Call the City Clerk's Office at 512-393-8090.

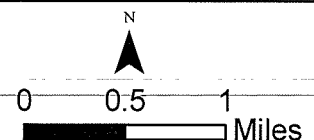


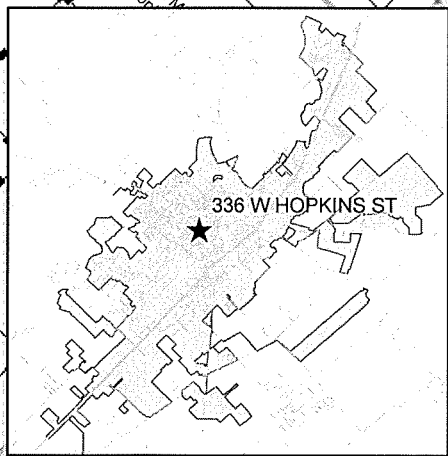
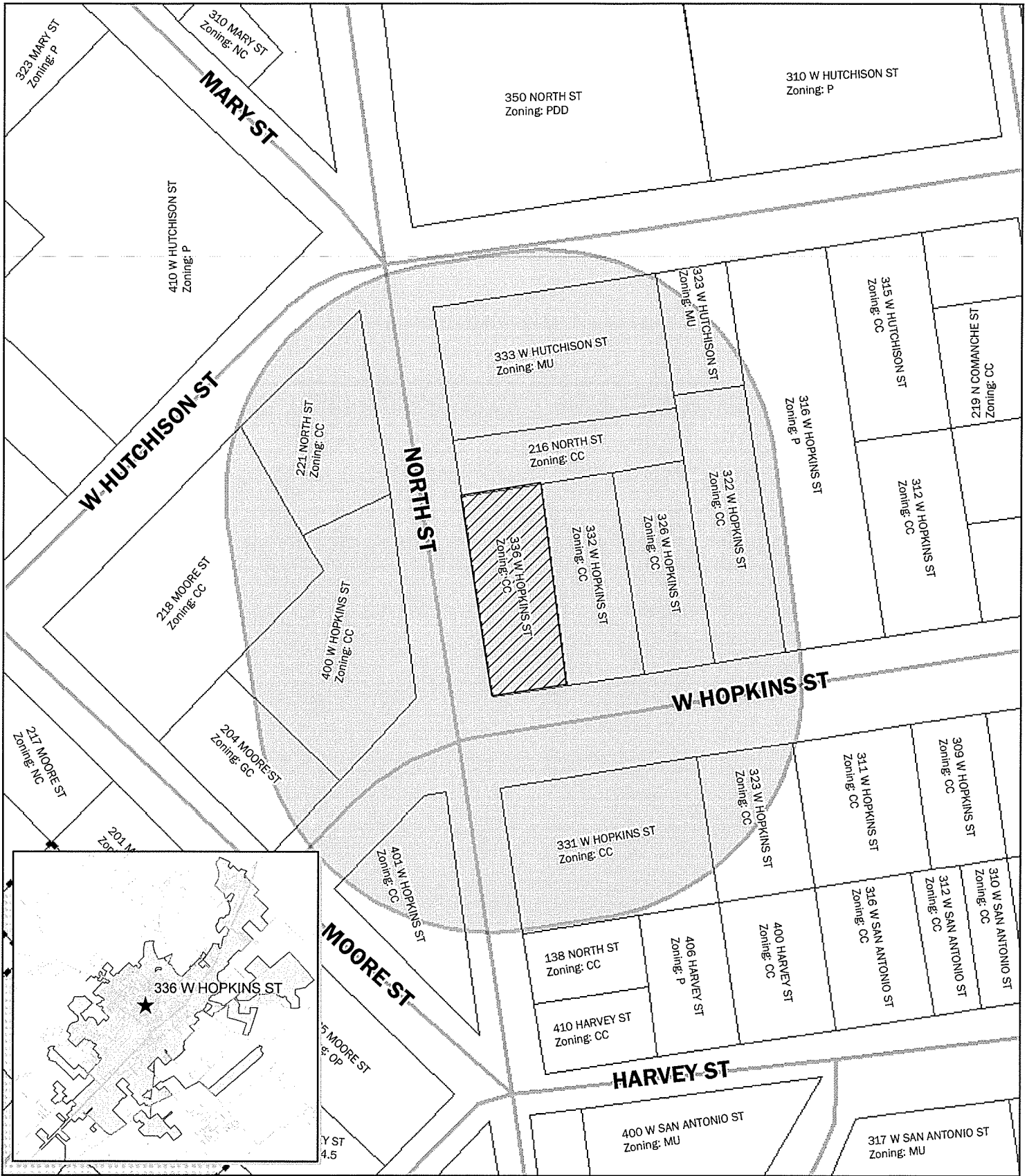
Location Map June 22, 2010

City of San Marcos
Development Services-Planning

Created By: John Foreman
Date: June 18, 2010

Map is not of survey quality. No warranty
is assumed or implied.






CUP-10-12

336 W Hopkins

Map Date: 06/11/10

 Notification Buffer
(200 feet)

 Site Location

 Historic District

This map was created by Development Services
for reference purposes only. No warranty is made
concerning the map's accuracy or completeness.



0 55 110 220
Feet

CUP-10-12
Conditional Use Permit
On-Premise Consumption
Zelick's
336 W. Hopkins



Applicant Information:

Applicant: Chase Katz
225 N Comanche
San Marcos TX 78666

Property Owner: Katz Development LLC
515 22nd St
Galveston TX 77550

Applicant Request: A Conditional Use Permit (CUP) to allow on-premise consumption of mixed beverages in a Community Commercial (CC) zoning district

Notification: Public hearing notification mailed June 11th. A list of property owners notified is attached.

Response: None as of June 17st

Subject Property:

Location: 336 W. Hopkins

Legal Description: D P Hopkins #1, Block 3, Lot Pt Of 1, Acres 0.2678

Frontage On: Hopkins, North

Neighborhood: Downtown

Existing Zoning: CC-Community Commercial

Master Plan Land Use: Commercial

Sector: 8

Existing Utilities: Existing

Existing Use of Property: Gas Station/Vacant

Proposed Use of Property: Restaurant/Bar

Zoning and Land Use
Pattern:

	Current Zoning	Existing Land Use
N of Property	CC	Commercial
S of Property	CC	Commercial
E of Property	CC	Vacant/Crystal River Inn
W of Property	CC	Office

Code Requirements:

A conditional use permit allows the establishment of uses which may be suitable only in certain locations or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are generally compatible with permitted uses, but require individual review and imposition of conditions in order to ensure the appropriateness of the use at a particular location.

A business applying for on-premise consumption of alcohol must not be within 300 feet of a church, school, hospital, or a residence located in a low density residential zoning district. This location **does** meet the distance requirements.

Case Summary

The subject property is located on the northwest corner of North and Hopkins. The applicant intends to open a bar/eating establishment with horseshoes, washers, bocceball, and an outdoor grilling area. No live amplified music is proposed. Hours will be from 2 p.m. to 2 a.m. The application indicates 22 parking spaces.

Comments from Other Departments:

Police, Code Enforcement, and Fire have not reported major concerns regarding the request. The Department of Environmental Health stated that the applicant will need to submit plans for the facility, meet all State Food Rule Requirements, submit an application, obtain Food Handler Training for employees and request a permit inspection. The Permit Center has stated that platting will likely be required, that all parking must meet dimensional requirements, and that additional requirements may be triggered based on what building work may be needed.

Planning Department Analysis:

The site was formerly used as a truck rental facility and was a gas station prior to that. Nearby uses are varied and include a veterinarian, an office building, and various retail.

Based on the floor area submitted on the application of 1,609 square feet, 17 parking spaces are required under the Land Development Code (LDC). The applicant's site plan indicates that the adjacent vacant lot, which the applicant also owns, will be used for 17 of the 22 spaces proposed. Locating required parking on a separate lot currently requires a special exception from the Zoning Board of Adjustments, though proposed code revisions would allow this to be handled administratively. As part of the approval process to allow parking on the adjacent lot, the decision maker will be charged with ensuring that buffering and screening requirements are met and may require additional buffering and screening to avoid adverse impacts on the adjacent property, the Crystal River Inn.

Neither of these lots is currently platted. Site work that involves public infrastructure or building additions or expansions will require platting. The applicant has indicated a preference not to incur the expense of platting at this time and to do only interior work. Development Services staff is currently working with the applicant to determine if the existing site design and surface materials are acceptable. Several items under review include:

- Parking lot surface material
- Possible addition of bathrooms
- ADA accessibility
- Ingress and egress
- Sidewalks

At this time, only minor modifications are proposed to the existing structure. Should substantial changes be required or proposed for the building or site, the applicant will be required to request an amendment to this CUP from the Planning and Zoning Commission and may be required to plat one or both lots.

Staff is not aware of any prior CUPs for on-premise consumption for the applicant. In order to monitor new permits for on-premise consumption of alcohol, the Planning Department's standard recommendation is that they be approved initially for a limited time period. Other new conditional use permits have been approved as follows:

- Initial approval for 1 year;
- Renewal for 3 years;

- Final approval for the life of the State TABC license, provided standards are met.

Staff recommends approval of the Conditional Use Permit with the following conditions:

1. The CUP shall be valid for an initial approval period of one (1) year, provided standards are met, subject to the point system;
2. The applicant shall submit plans and an application for the facility to the Health Department, meet all State Food Rule Requirements, obtain Food Handler Training for employees, and request a permit inspection.
3. All parking spaces shall meet dimensional requirements in the LDC;
4. Any required parking to be located off-site shall receive all required approvals, and
5. The applicant shall plat the property when required by the LDC.

Planning Department Recommendation:	
	Approve as submitted
X	Approve with conditions or revisions as noted
	Alternative
	Denial

The Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Conditional Use Permit. After considering public input, the Commission is charged with making a decision on the Permit. Commission approval is discretionary. The applicant, or any other aggrieved person, may submit a written appeal of the decision to the Planning Department within 10 working days of notification of the Commission's action, and the appeal shall be heard by the City Council.

The Commission's decision is discretionary. In evaluating the impact of the proposed conditional use on surrounding properties, the Commission should consider the extent to which the use:

- is consistent with the policies of the Master Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes improvements to mitigate development-related adverse impacts; and
- does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

Conditions may be attached to the CUP that the Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the intent of the Code.

Prepared by:

John Foreman

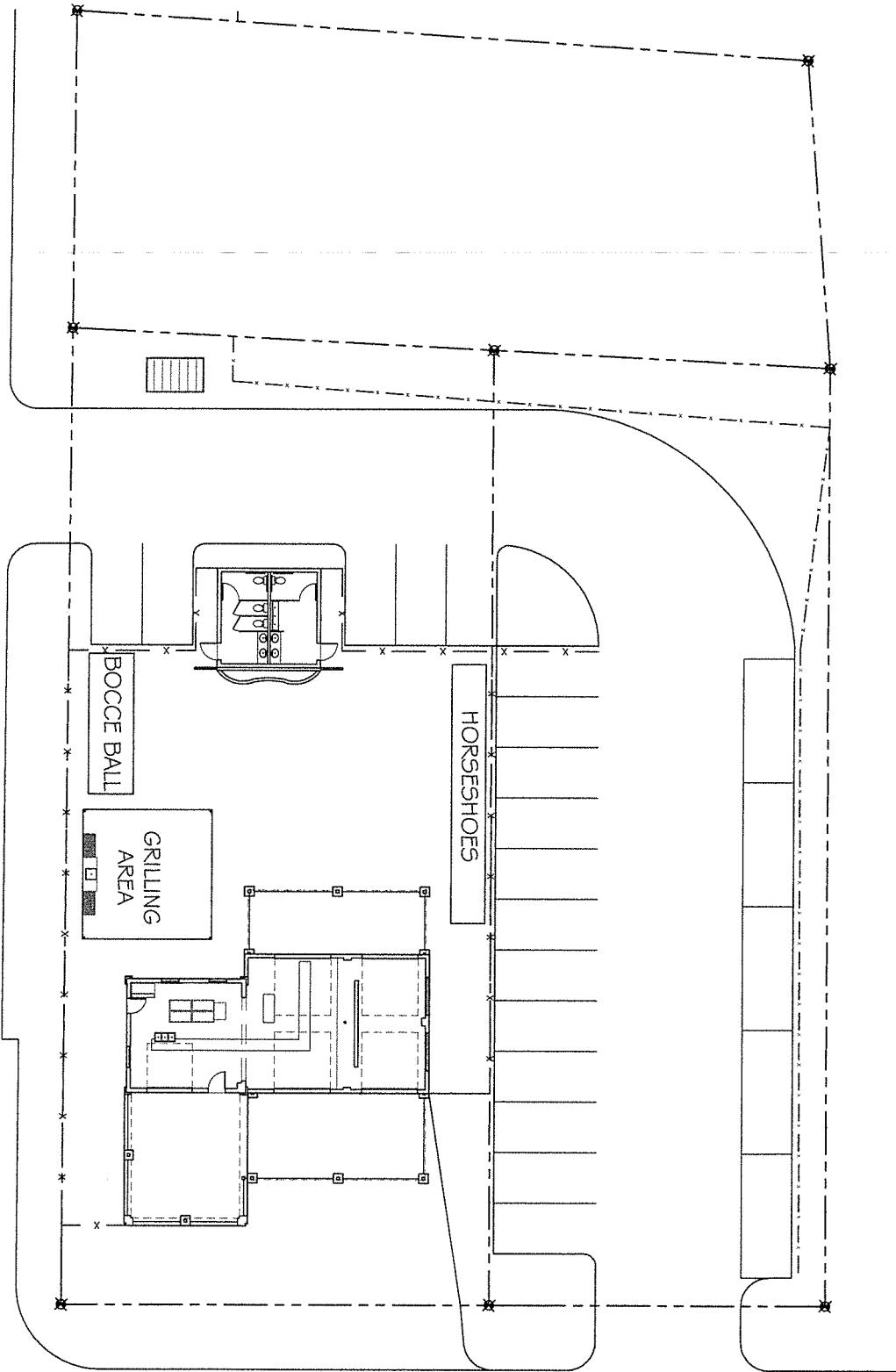
Planner

6/17/2010

Name

Title

Date

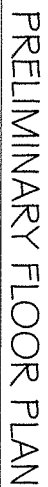


NORTH


1 SITE PLAN
Scale: 1:30

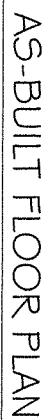
HOPKINS

DATE: 5-11-2010 SCALE: AS NOTED DRAWN: BNT CHECKED: JZG SHEET: SP 1	DESIGN OF BUILDING FOR: KATZ ICE HOUSE SAN MARCOS, TX 78666	 ARENCO DEVELOPMENT, LLC ARCHITECTURE • ENGINEERING • CONSTRUCTION 1540 IH 35 SOUTH OFFICE SUITE A SAN MARCOS, TX 78666 OFFICE: (512)396-9595 FAX: (512)396-9595 ARENCODGROUP@YAHOO.COM	REVISIONS
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Keywords:

DATE: 5-11-2010 SCALE: 1/8" = 1'-0" DRAWN: BNT ASER SHEET: A2	DESIGN OF BUILDING FOR: <div style="text-align: center;"> <h1>KATZ ICE HOUSE</h1> <h2>SAN MARCOS, TX 78666</h2> </div>	<div style="text-align: center;">  <p>ARENCO DEVELOPMENT, LLC</p> <p>ARCHITECTURE • ENGINEERING • CONSTRUCTION</p> </div> <div style="display: flex; justify-content: space-between; font-size: small;"> <div> 1540 IH 35 SOUTH OFFICE SUITE A SAN MARCOS, TX 78666 </div> <div> OFFICE: (512) 396-9595 FAX: (512) 396-9595 ARENCOENGINEERINGANDCONSTRUCTION.COM </div> </div>	REVISIONS
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SHEET

A1

DATE:
S-11-2010

SCALE:
1/8" = 1'-0"


DRAWN BY:
BNT

AREA:

DESIGN OF BUILDING FOOT

KATZ ICE HOUSE

SAN MARCOS, TX 78666

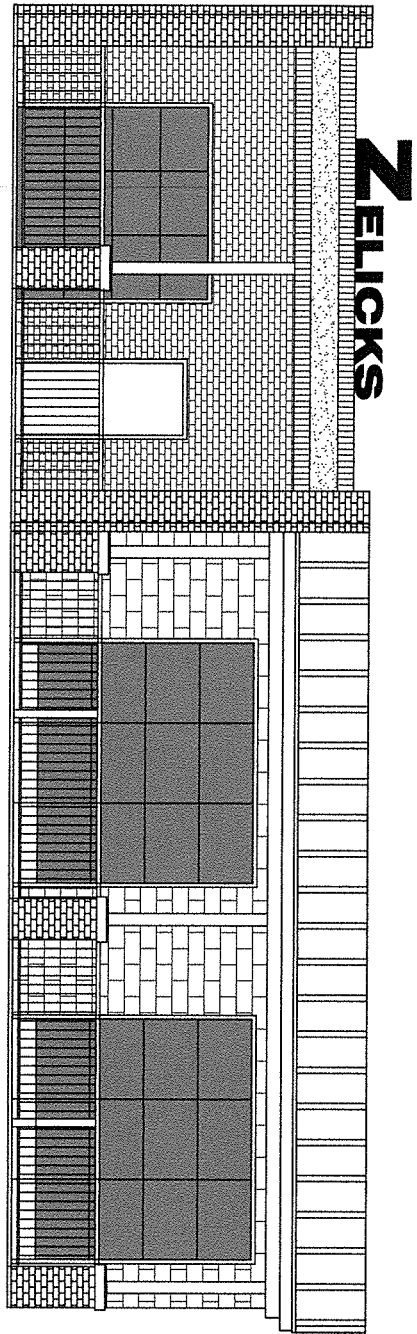


ARENCO
DEVELOPMENT, LLC
ARCHITECTURE • ENGINEERING • CONSTRUCTION

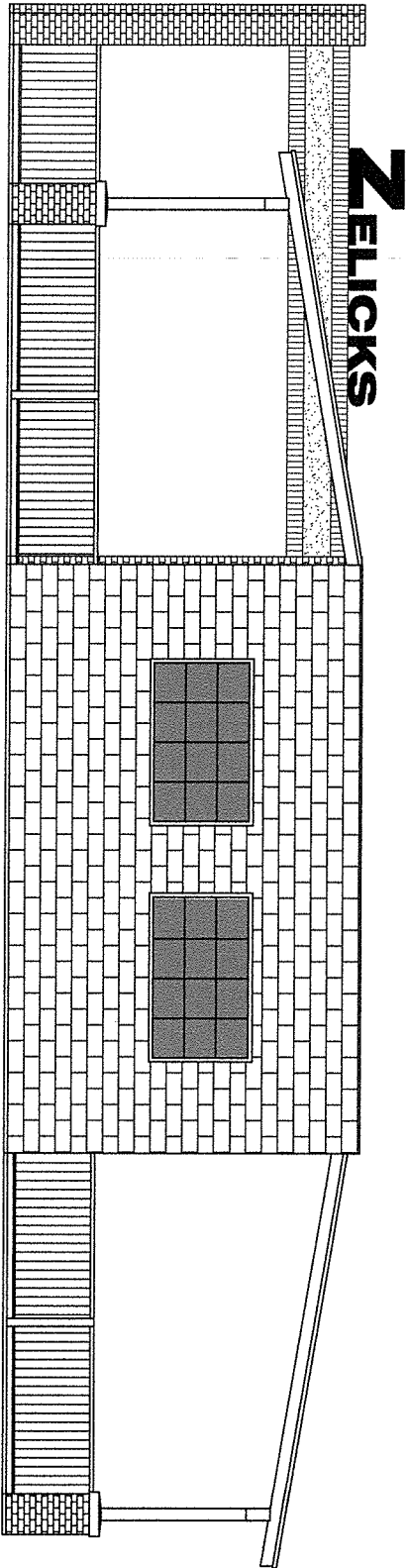
1543 IH 35 SOUTH
OFFICE SUITE A
SAN MARCOS, TX 78666
ARENCO@GMAIL.COM

OFFICE: (512)396-9595
FAX: (512)396-9596
ARENCOENGINEERSANDARCHITECTS.COM

REVISIONS

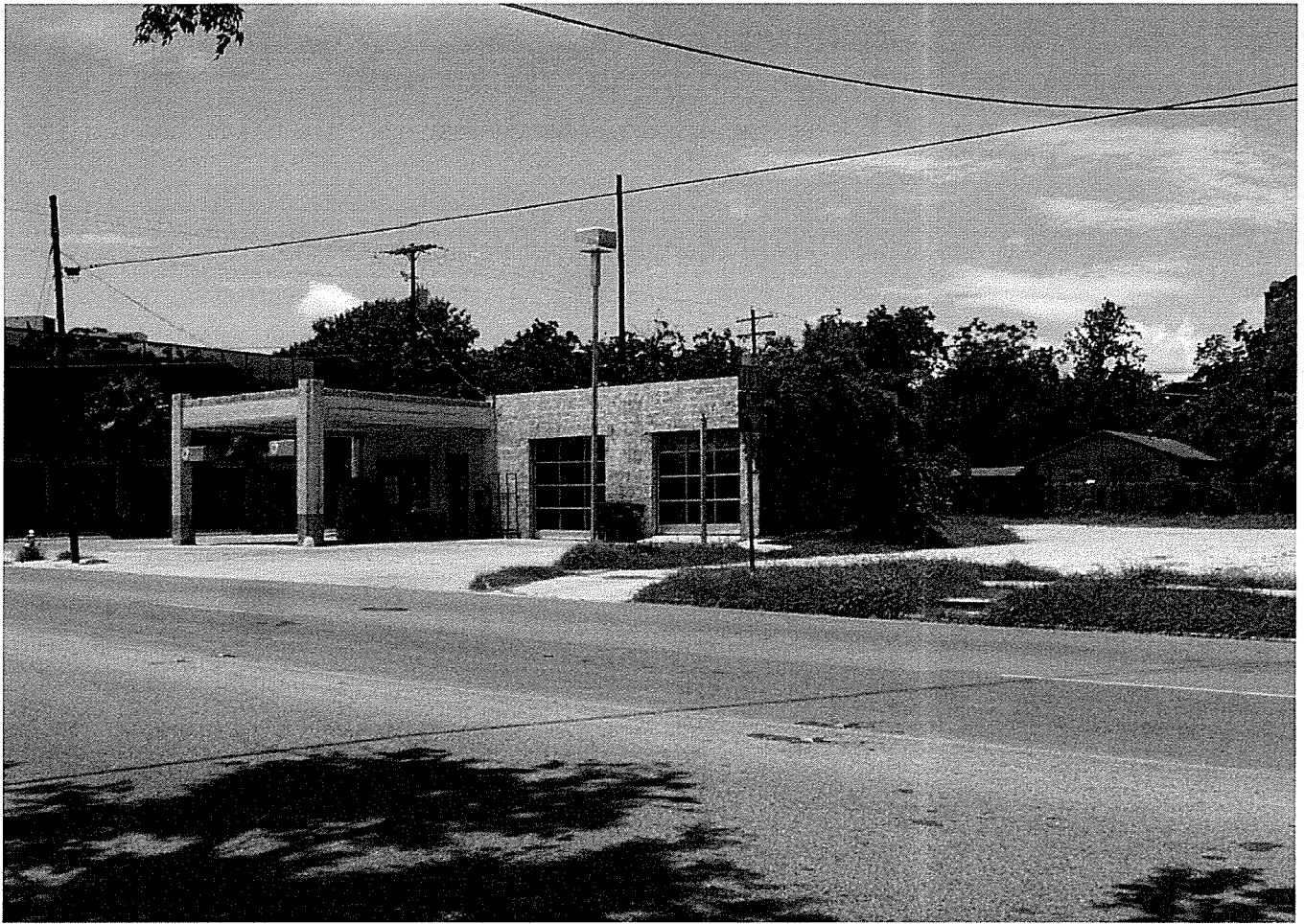


1 FRONT ELEVATION
Scale: 1/8" = 1'-0"



2 RIGHT ELEVATION
Scale: 1/8" = 1'-0"







2010 JUN 18 AM 10:00
DEVELOPMENT SERVICES
CITY OF SAN MARCOS

6/15/2010

To: City of San Marcos Planning and Zoning
From: Mike and Cathy Dillon
Re: Chase Katx conditional use permit

We are unable to be in San Marcos for the zoning hearing on the 22nd, but make no mistake we are VERY concerned about its outcome!

As an upstanding business which has brought millions of dollars in tourist revenues into this town during our 26 years on W. Hopkins Street, we want to make it plain how much we value peace and quiet in our neighborhood. Our guests do not take kindly to having their sleep disturbed by the constant traffic racket, and by loud partying at the Sanctuary, Tantra Coffeehouse, and wafting over from downtown. The growth of the town is something that we value, and we are well aware that "racket-producing" circumstances have grown up around our ears; and yet, if it becomes any worse it will literally threaten our existence.

That said, the Katz family has presented their plans to us, and we approve of the business as it is being presented. They have said that their business will be a quiet garden bar intended to facilitate conversation, and will never offer amplified music. Quiet acoustic music would be acceptable next door to us.

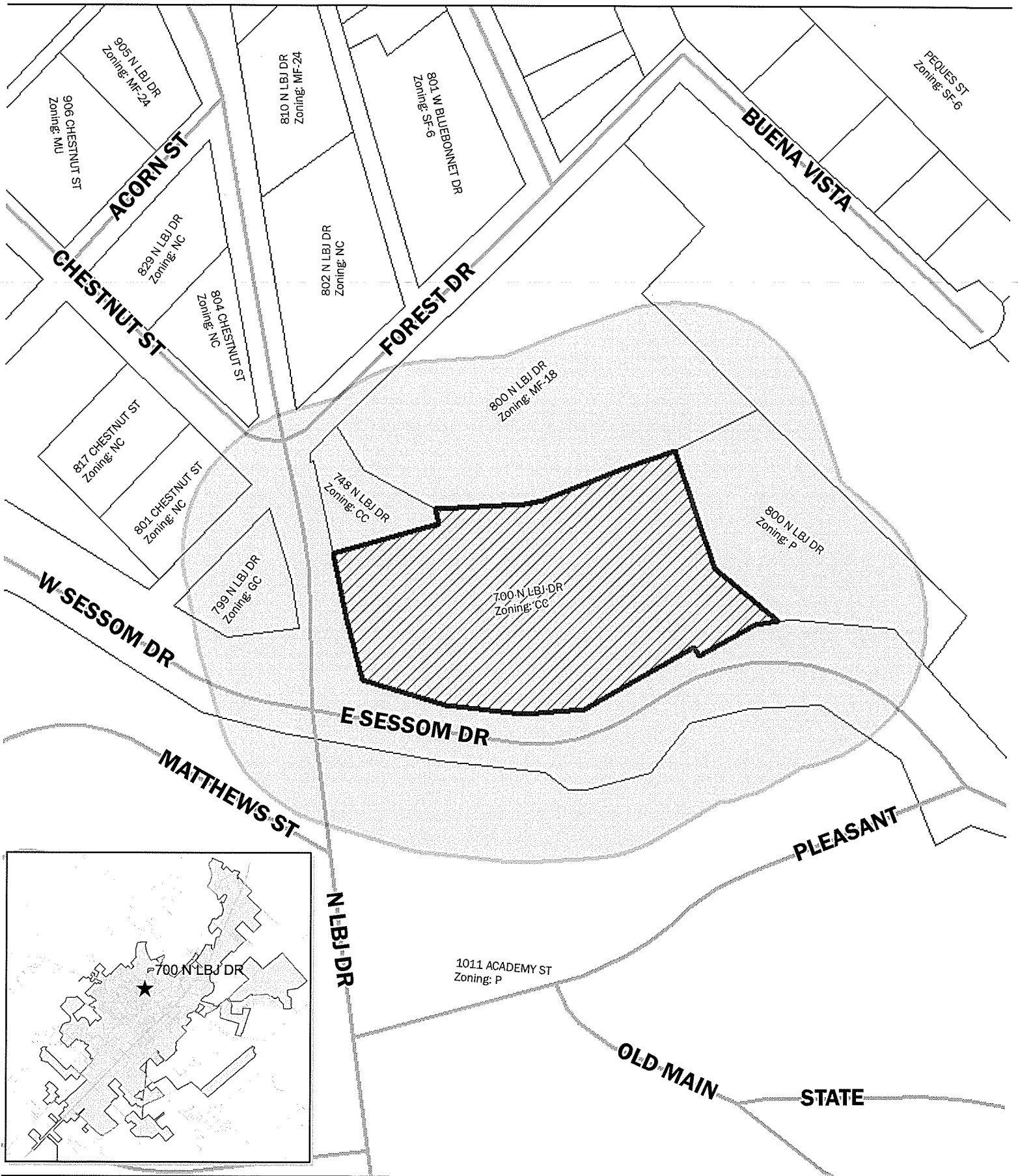
Loud amplified band music or huge loud gatherings would, quite simply, destroy our inn.

We hope that you will consider our plight and somehow write this restriction into whatever conditional use permit these people are granted.




It is great to have the Uhaul trailers gone, and a pretty garden scheduled to take its place. This block of Hopkins Street is too central and too visible and too important to the town, to have it visually marred by anything ugly.

Sincerely,

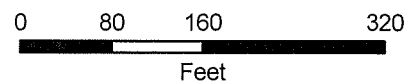
Cathy & Mike Dillon



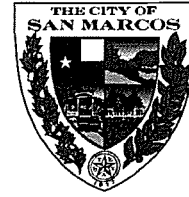
CUP-10-13
700 N LBJ
Map Date: 06/10/10

-  Notification Buffer (200 feet)
-  Site Location
-  Historic District

This map was created by Development Services for reference purposes only. No warranty is made concerning the map's accuracy or completeness.



CUP-10-13
Conditional Use Permit
Hookah Bar
700 N LBJ Drive, Suite 113



Applicant Information:

Applicant: Jonathan Ellis
900 Peques Street, #1101
San Marcos, TX 78666

Property Owner: Hjorting Family Trust
926 San Roque Rd
Santa Barbara, CA 93105

Applicant Request: Approval of a Conditional Use Permit (CUP) to allow a Hookah Bar (smoking lounge) to be located in Community Commercial (CC) Zoning District.

Notification: Public hearing notification was mailed on June 10, 2010.

Response: No responses to date from notice.

Subject Property:

Location: 700 N LBJ Drive, Suite 113

Legal Description: Lot 1, The Centre at San Marcos

Neighborhood: Centre at San Marcos; Forest Hill; G B Ezell; Duncan Add; Park Add

Existing Zoning: Community Commercial (CC)

Master Plan Land Use: Commercial

Sector: Sector 3

Existing Use of Property: Commercial

Zoning and Land Use:

Proximity	Current Zoning	Existing Land Use
N of Property	Community Comm. MF-18	Commercial High Density Resid.
S of Property	Public/Institutional	Public/Institutional
E of Property	Public/Institutional	Public/Institutional
W of Property	General Comm.	Commercial

Code Requirements:

A conditional use permit allows the establishment of uses which may be suitable only in certain locations or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are generally compatible with permitted uses, but require individual review and imposition of conditions in order to ensure the appropriateness of the use at a particular location.

The Community Commercial (CC) zoning district is established to provide areas for quality larger general retail establishments and service facilities for the retail sale of goods and services. This district should generally consist of retail nodes located along or at the intersection of major collectors or thoroughfares to accommodate high traffic volumes generated by general retail uses. A hookah bar (smoking lounge) use requires a Conditional Use Permit in Community Commercial (CC) zoning districts.

Comments from Other Departments:

Building, Engineering, Fire, Police, Health Department, and Code Enforcement have reported no concerns regarding this Conditional Use Permit request.

Planning Department Analysis:

The applicant is requesting a Conditional Use Permit to allow a hookah bar (smoke lounge) facility in a commercial strip retail center that is zoned Community Commercial (CC).

The proposed hookah bar will be situated in the Centre of San Marcos, located in the northwest quadrant of San Marcos, on the northeast corner of North LBJ Drive and East Sessom Drive. This business will be known as "The Burn Lounge," and will serve hookah (water based smoking apparatus for smoking substances with molasses flavoring) as well as pre-packaged snacks and non-alcoholic beverages. The sale of alcohol will require a separate CUP. This retail space is 40 feet deep and 27.5 feet wide, containing 1,100 square feet. Hours of operation will be from 2:00 pm to 2:00 am daily. There is sofa/chair seating for 36 and floor seating for 8. Eleven parking spaces are required for this business. There are 122 parking spaces provided for business and customers in the entire Centre of San Marcos.

The Staff believes this proposed use is consistent with the policies of the Master Plan and the general intent of the zoning district. The proposed facility is compatible with the character and integrity of adjacent developments and neighborhood and will not adversely impact surrounding properties.

Staff recommends approval with the following conditions:

- ☐ **Approval for initial 1 year period to evaluate the impact on the neighborhood.**

Planning Department Recommendation:	
	Approve as submitted
X	Approve with conditions or revisions as noted
	Alternative
	Denial

The Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Conditional Use Permit. After considering public input, the Commission is charged with making a decision on the Permit. Commission approval is discretionary. The applicant, or any other aggrieved person, may submit a written appeal of the decision to the Planning Department within 10 working days of notification of the Commission's action, and the appeal shall be heard by the City Council.

The Commission's decision is discretionary. In evaluating the impact of the proposed conditional use on surrounding properties, the Commission should consider the extent to which the use:

- is consistent with the policies of the Master Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes improvements to mitigate development-related adverse impacts; and
- does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

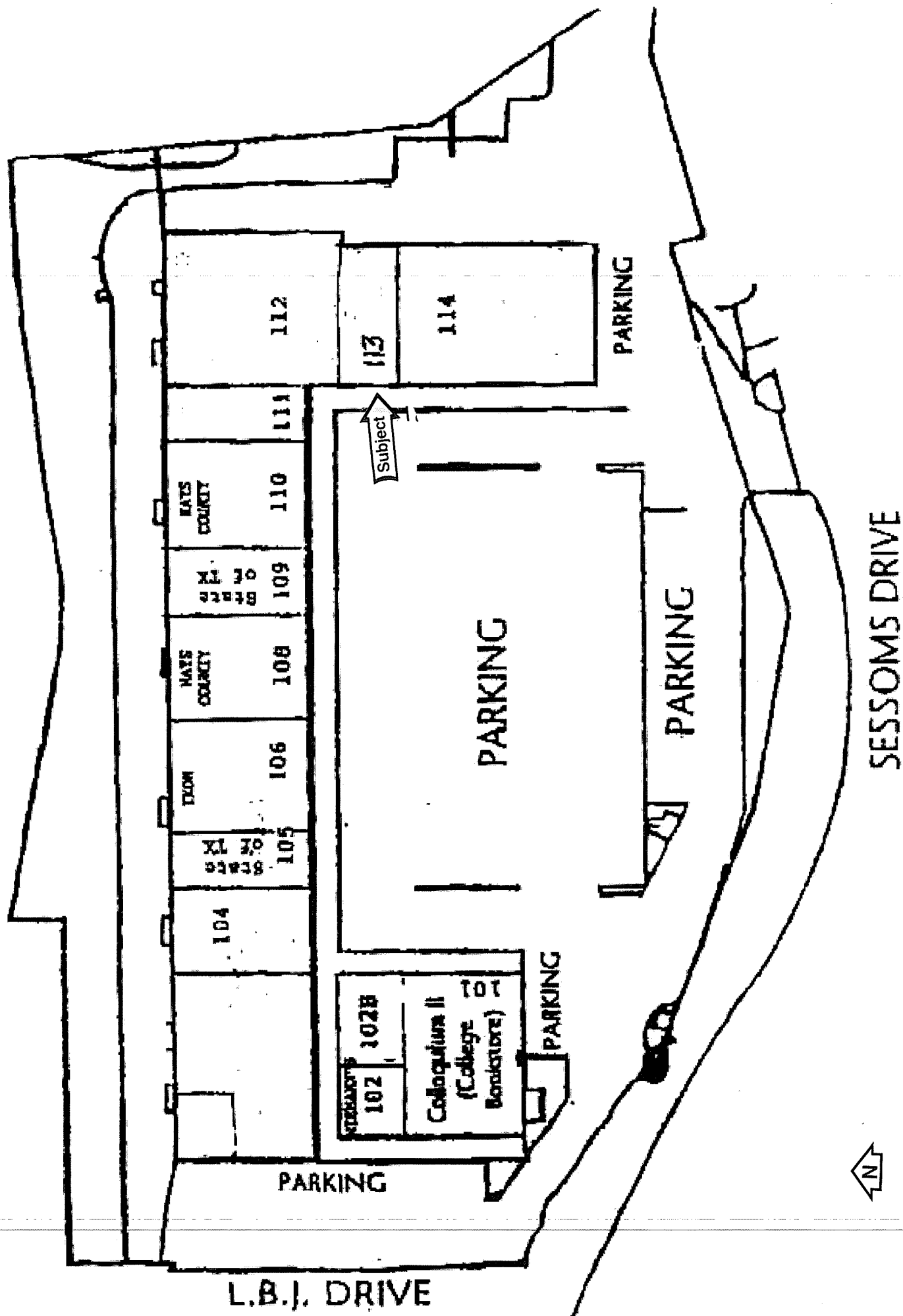
Conditions may be attached to the CUP that the Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the intent of the Code.

Attachments:

Location Map
Site Plan
Floor Plan
Site Photos

Prepared by:

Phil Steed	Planner	June, 16, 2010
Name	Title	Date



Sink

Sink

Restroom: 8x8

Sofas: 8

Table/Chair Combos (seats 4): 3

Floorseating: 8

Estimated Occupany (max): 50

1100 sqft

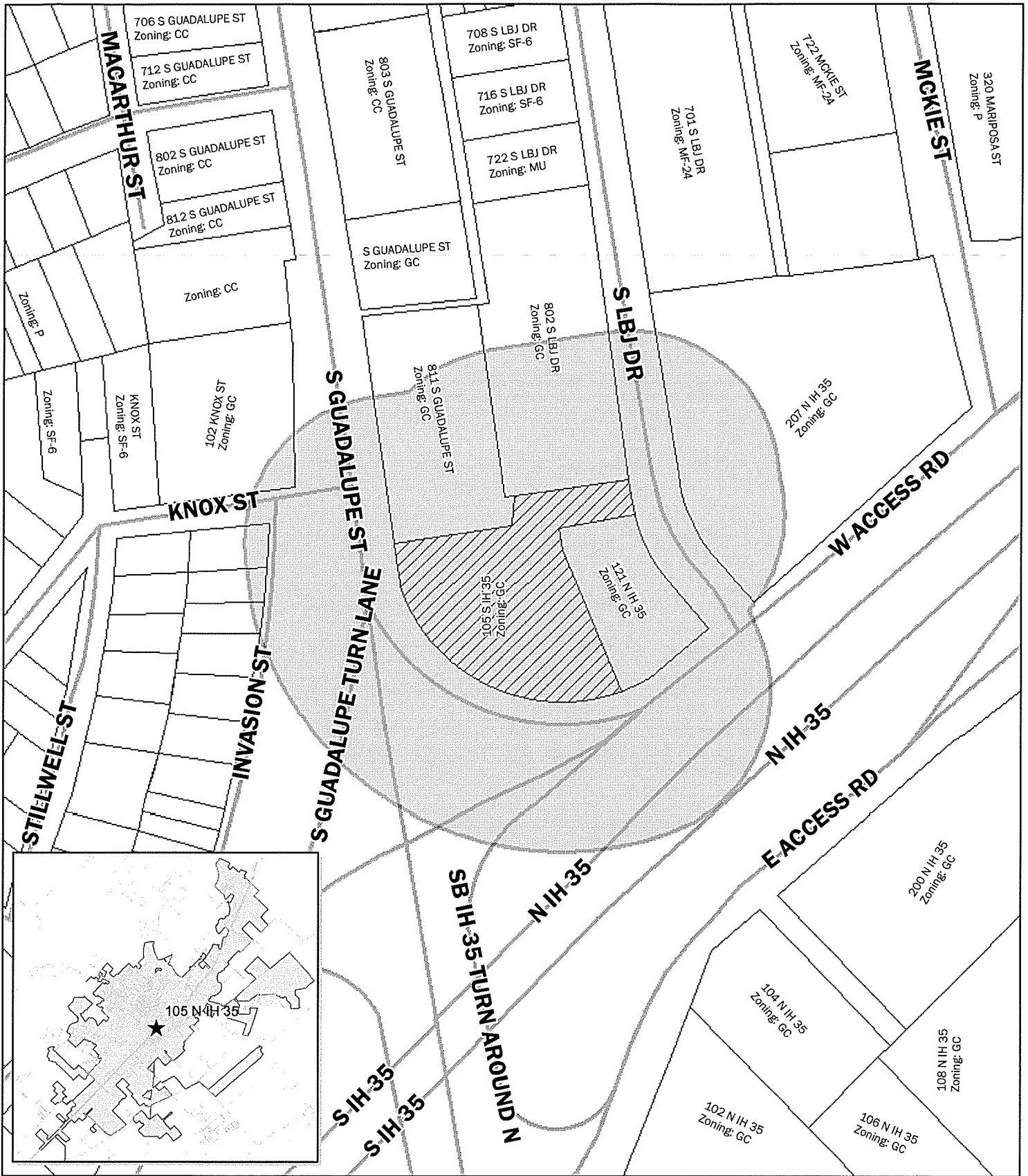
40 ft

27.5 ft

Secondary Door

Primary Door






CUP-10-14

105 N IH 35

Map Date: 06/11/10

 Notification Buffer
(200 feet)

 Site Location

 Historic District

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concerning the map's accuracy or completeness.



0 80 160 320
Feet

**Conditional Use Permit
CUP-10-14
Pluckers
105 N IH 35**



Applicant Information:

Applicant: Pluckers San Marcos AS,LP
811 Barton Springs Rd Ste 520
Austin TX 78704

Property Owner: Anderson Red Robin LP
11204 SE 220th Place
Kent, WA 98031

Applicant Request: Renewal of a Conditional Use Permit (CUP) to allow on-premise consumption of liquor, beer, and wine

Notification: Public hearing notification mailed on June 11, 2010.

Response: No responses as of June 14th

Subject Property:

Location: 105 N IH 35

Legal Description: Omni and Fraye Addition Lot 2-A

Frontage On: IH 35

Neighborhood: Near East Guadalupe and Victory Gardens

Existing Zoning: GC

Master Plan Land Use: Commercial

Sector: Sector 4

Utilities: Adequate

Existing Use of Property: Restaurant

Proposed Use of Property: Restaurant

Zoning and Land Use Pattern:

	Current Zoning	Existing Land Use
N of Property	GC	Commercial
S of Property	-	IH 35
E of Property	GC	Commercial
W of Property	SF 4.5	Residential

Code Requirements:

A conditional use permit allows the establishment of uses which may be suitable only in certain locations or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are generally compatible with permitted uses, but require individual review and imposition of conditions in order to ensure the appropriateness of the use at a particular location.

A business applying for on-premise consumption of alcohol must not be within 300 feet of a church, school, hospital, or a residence located in a low density residential zoning district. This location does meet the distance requirements.

Case Summary

Pluckers received a CUP for on premise consumption of beer, wine and liquor on November 25, 2008 and it was subsequently renewed in December of 2009. At the most recent review of the CUP by the Planning and Zoning Commission the conditional use permit was renewed with the following conditions:

- six (6) months provided standards are met, subject to the point system
- live music be played no later than 10:30 PM Sunday through Wednesday, 11:00 PM on Thursday, and midnight on Friday and Saturday
- The applicant complies with the noise standards in place.

According to the application, hours of operation are from 11AM to 2AM. The indoor seating capacity is 186 and outdoor seating is 134. There is a stage for live entertainment. The current hours for live music conclude at 10:30 PM Sunday through Wednesday, 11:00 PM on Thursday, and midnight on Friday and Saturday.

Planning Department Analysis:

Prior to the review of the conditional use permit in December the police department had received 18 noise complaints for the subject property over a period of a year. Due to the number of complaints and the desire to monitor the situation more closely the Planning and Zoning Commission approved the CUP for a period of 6 months rather than the typical two year period.

Since the renewal of a Conditional Use Permit, six months ago, the police department has been called out one time as a result of a noise complaint.

Staff has evaluated the impact of the proposed conditional use permit on the surrounding properties and has made the following findings:

- The request is consistent with the policies of the Master Plan and the general intent of the zoning district. It appears that the restaurant staff has taken steps to be more cognizant of the noise it produces and the effects on the surrounding properties.
- The request does not appear to generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

Staff provides this request to the Commission for your consideration and recommends approval of the Conditional Use Permit with the following conditions:

1. The CUP be valid for two (2) years.
2. Live music be played no later than 10:30 PM Sunday through Wednesday, 11:00 PM on Thursday, and midnight on Friday and Saturday.
3. The applicant comply with the noise standards as they exist or as amended

Planning Department Recommendation:	
	Approve as submitted
X	Approve with conditions or revisions as noted
	Alternative
	Denial

The Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Conditional Use Permit. After considering public input, the Commission is charged with making a decision on the Permit. Commission approval is discretionary. The applicant, or any other aggrieved person, may submit a written appeal of the decision to the Planning Department within 10 working days of notification of the Commission's action, and the appeal shall be heard by the City Council.

The Commission's decision is discretionary. In evaluating the impact of the proposed conditional use on surrounding properties, the Commission should consider the extent to which the use:

- is consistent with the policies of the Master Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes improvements to mitigate development-related adverse impacts; and
- does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

Conditions may be attached to the CUP that the Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the intent of the Code.

Attachments:

Location Map
Application

Prepared by:

Sofia Nelson

Senior Planner

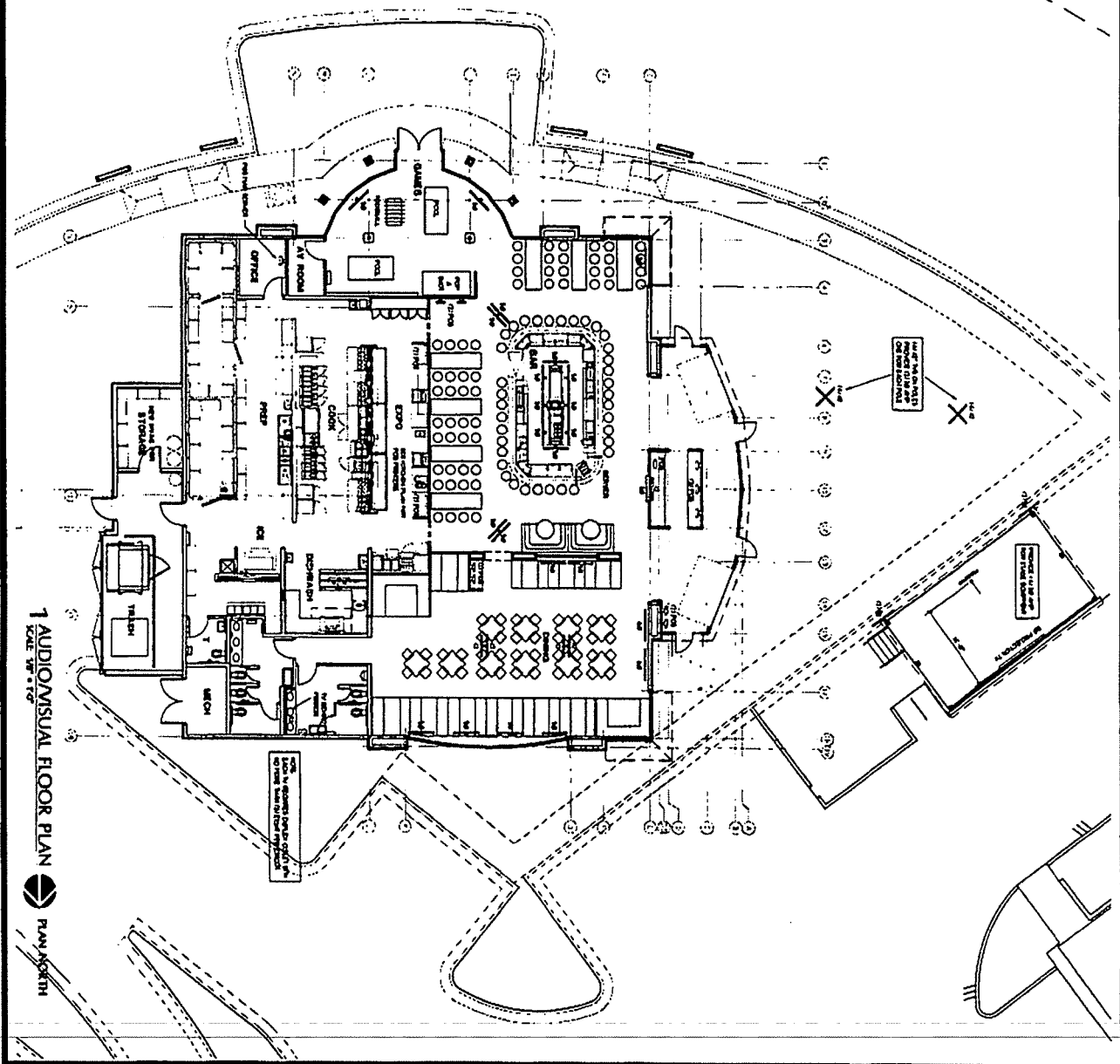
June 14, 2010

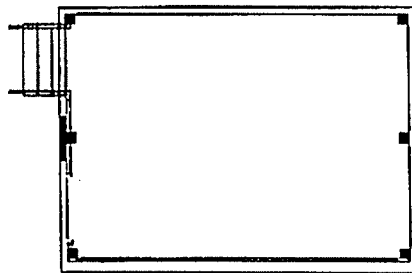
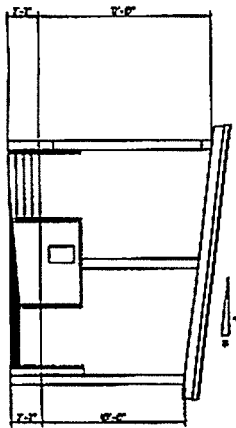
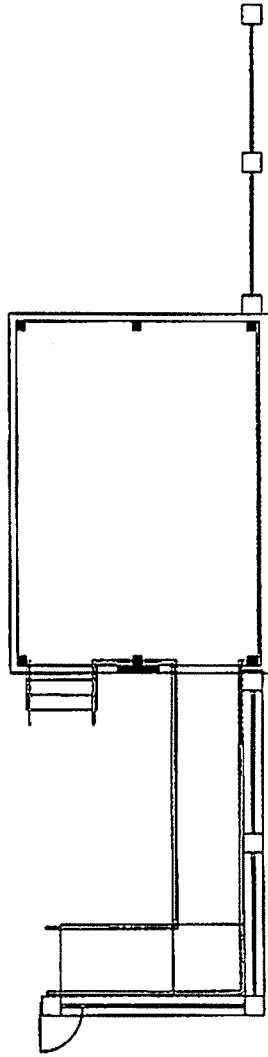
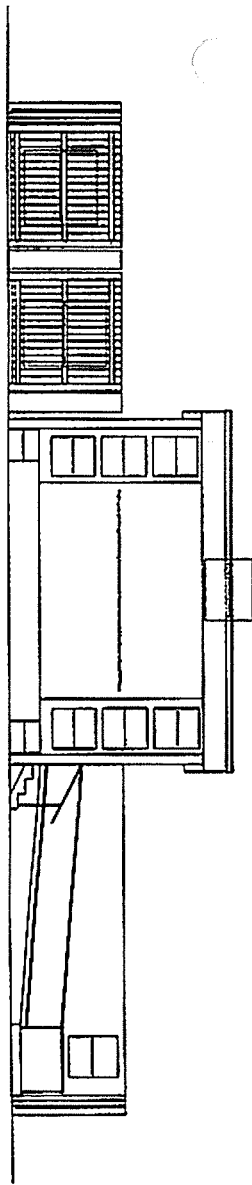
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Title

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DEVELOPMENT
SERVICES-PLANNING

MEMO

TO: PLANNING AND ZONING COMMISSION
FROM: Sofia Nelson, Senior Planner
DATE: June 17, 2010
RE: LDC REVISIONS- UPDATE

Background

In response to a request from the Planning Commission Chair and Commissioner Stark the following LDC revisions are being presented for your review. Since your last review of the proposed LDC revisions, on May 25th, staff has meet with the Austin Homebuilders Association and the San Marcos Board of Realtors to discuss concerns regarding the revisions.

The below items represent areas of the Land Development Code that citizens and the development community have demonstrated concern regarding inconsistent and unclear language, promote an attractive visual environment, and improve clarity, conciseness, predictability, usability and to support good planning practices.

The sections that are being reviewed for possible revisions include the following:

- Section 1.6.1.3- A platting exemption was added for acquisition of land for governmental purpose by dedication, condemnation or easement
 - Section 1.6.6.6- Maintenance and Warranty of Improvements
 - A reduction in maintenance bond from 100% to 20%
 - Table 4.1.6.1-Maximum Building Height
 - Currently coded for a maximum number of feet per zoning district, we are recommending a maximum number of stories per zoning district.
 - Land Use Matrix
 - Amend the land use matrix to improve clarity and conciseness by removing multiple land uses from the land use matrix and combining them into a general land use (i.e. insurance agency, legal office, and real estate office will now be listed as professional office).
-

- Section 5.5.1.1- Tree Preservation Standards
 - Streamlined and clarified existing language and added definitions
- Section 6.7.2.1 Lot frontage Minimum
 - Removed conflicting language within the LDC
- Section 6.4.2.1 Noise Ordinance
 - Clarified language to improve enforceability by police
- Section 6.2.1.1 Off Street Parking Standards
 - Reduced parking standards for certain uses (medical office, multi-family developments) and established a provision for an alternative parking plan.
- Section 4.5.3.7 Special Exception
 - Removed the requirement for ZBOA approval for a shared parking agreement and allowed for administrative approval
- Section 7.4.2.3 Sidewalk Requirements
 - Added exceptions for sidewalk construction and removed the requirement for the City to expend cash contributions to the fee-in-lieu of dedication account within ten years.
- Section 7.4.1.4- Street lighting requirements
- Water Quality Standards
 - Water Quality Standards for Best Management Practices were added.
- Chapter 8 Glossary- Amendments to the Glossary section of the LDC
 - Amendments to the definition of Intermediate Waterway and Major Waterway

Action Required

The Planning and Zoning Commission is charged with holding a public hearing on the revisions to the Land Development Code and recommending any necessary or desirable changes to the council.

Section 1.6.1.3 Exemptions

- a) The following land divisions are exempt from the requirements of this Article that apply to subdivision plats:
 - (1) Sale, inheritance, or gift of land by metes and bounds of tracts upon which no improvements, development, subdivision or alteration is intended;
 - (2) Use of existing cemeteries complying with all State and local laws and regulations;
 - (3) A division of land created by order of a court of competent jurisdiction;
 - (4) A division of land that results in the creation of two or more parcels, each of which is greater than five acres inside the City limits, or each of which is greater than ten acres within the City's extraterritorial jurisdiction, when each parcel has direct access to an existing public street, and no dedication of public facilities is required under this Land Development Code in connection with the division; and
 - (5) Creation of a remainder tract.
 - (6) Acquisition of land for governmental purpose by dedication, condemnation, or easement
 - (b) The following development activities are exempt from the requirements of this Article that apply to development plats:
 - (1) Any development activity associated with a subdivision plat that conforms to the requirements set forth in Divisions 3 and 5 of this Chapter;
 - (2) Sale, inheritance, or gift of land by metes and bounds of tracts upon which no improvements, development, subdivision or alteration is intended;
 - (3) Use of existing cemeteries complying with all State and local laws and regulations;
 - (4) Bona fide agricultural activities;
 - (5) Construction of agricultural accessory structures and related development activities; and
 - (6) Construction of a single-family dwelling and related accessory structures and development activities.
-

Section 1.6.6.3 Subdivision Improvement Agreement

- (a) *Obligations under Agreement.* Whenever public improvements to serve the development are deferred until after Final Subdivision Plat or Final Development Plat approval, the property owner shall enter into a subdivision improvement agreement by which the owner covenants to complete all required public improvements, including residential lot improvements for drainage or erosion control, and common area improvements, no later than two years following the date upon which the Final Subdivision Plat or Final Development Plat is approved. The agreement shall be subject to review and approval by the City Attorney, and shall be approved by the Planning and Zoning Commission with approval of the Final Subdivision Plat or Final Development Plat. The agreement shall contain the following provisions:
- (1) Covenants to complete the improvements;
 - (2) Covenants to warranty the improvements for a period of one year following acceptance by the City;
 - (3) Covenants to provide a maintenance bond in the amount of 20 ~~400~~ percent of the costs of the improvements for such period;
 - (4) Provisions for participation in the costs of the improvements by the City, if authorization has been obtained from the City Council, and a performance bond for such improvements from the contractor, with the City as a co-obligee;
 - (5) Provisions for securing the obligations of the agreement consistent with Section 1.6.6.4; and
 - (6) Such other terms and conditions as are agreed to by the property owner and City, or as may be required by this Land Development Code.
- (b) *Covenants to Run with the Land.* The subdivision improvement agreement shall provide that the covenants contained in the agreement run with the land and bind all successors, heirs and assignees of the property owner. All existing lienholders shall be required to execute the agreement or provide written consent to the covenants contained in the agreement. The City shall deliver a release to bona fide third party purchasers of individual lots when all required public improvements have been accepted by the City.

(Ord. No. 2006-45, § 13, 9-19-06)

Section 1.6.6.6 Maintenance and Warranty of Improvements

- (a) *Maintenance during Construction.* The property owner shall maintain all required public improvements during construction of the development.
- (b) *Bond.* The owner shall covenant to warranty the required public improvements for a period of one year following acceptance by the City of all required public improvements and shall provide a maintenance bond in the amount of 20 ~~400~~ percent of the costs of the improvements for such period. All improvements located within an easement or right-of-way shall be bonded.
-

Table 4.1.6.1

Residential Districts															
Standard Category	FD	AR	SF-R	SF-11	SF-6	SF-4.5	D*	DR*	TH	PH-ZL	MF-12	MF-18	MF-24	MR	MH
Lot/Parcel Area, Minimum Sq. Ft.	87120	217800	43560	11000	6000*	4500*	11000	5400	2500*	4000	*	*	12000	6000*	3200*
Lot/Parcel Area, Maximum Acres	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Units per Acre, Maximum/Gross Acre	0.40	0.15	0.80	3.0	5.5	7.5	6.0	6.0	6 / 12	7.5	12.0	18.0	24.0	5.5	9.0
Lot Frontage Minimum Feet	150	200	150	80	35	35	60	40	25	35	40	60	60	35	40
Lot Width, Minimum Feet	200	200	150	80	50*	50*	90	50	25	40	60	70	60	60	40
Front Yard Setback, Minimum Feet	50	40	40	30	25	20	25	25	20	20	25	25	25	25	10
Side Setback, Minimum Feet, Interior	20	20	20	10	5	5	5	5	0*	0/10*	10	10	10	7.5	5
Side Setback, Corner, Minimum Feet	25	25	25	15	15	15	10	15	12	10	15	15	15	15	25
Rear Yard Setback, Minimum*	20%	20%	20%	20%	20ft.	15ft.	20ft.	15ft.	10ft.	10ft.	10ft.	10ft.	10ft.	20ft.	20ft.
Lot Depth, Minimum Feet	200	200	200	100	100	90	100	90	N/A	85	100	100	100	100	80
Impervious Cover, Max. %**	30%	15%	40%	40%	50%	60%	75%	75%	70%	75%	75%	75%	75%	50%	N/A
Building Height, Maximum Feet Stories*	30 2	30 2	30 2	30 2	30 2	30 2	30 2	30 2	30 2	30 2	45 4	45 4	45 4	30 2	35 2

Standard Category	Special or Non-Residential Districts									
	MU	P	NC	OP	CC	GC	HC	CBA	LI	HI
Lot/Parcel Area, Minimum Sq. Ft.	6000	N/A	6000	6000	6000	6000	6000	6000	6000	6000
Lot/Parcel Area, Maximum Acres	20	N/A	5	5	N/A	N/A	N/A	N/A	N/A	N/A
Units per Acre, Maximum/Gross Acres	5.5	24.0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Lot Frontage Minimum Feet	50	50	50	50	50	50	50	50	50	50
Lot Width, Minimum Feet	50	50	50	50	50	50	50	50	50	50
Front Yard Setback, Minimum Feet	25	25	20	20	20	20	25	0*	20	20
Side Setback, Minimum Feet, Interior	7.5	7.5	5	5	5	5	10	0	10	10
Side Setback, Corner, Minimum Feet	15	15	15	15	15	15	15	0	15	15
Rear Yard Setback, Minimum*	5ft.*	5ft.*	5ft.*	5ft.*	5ft.*	5ft.*	20ft.	5ft.	10ft.*	10ft.*
Lot Depth, Minimum Feet	100	100	100	100	100	100	100	100	100	100
Impervious Cover, Max. %**	60%	80%	80%	80%	80%	80%	80%	N/A	85%	85%
Building Height, Maximum Feet Stories*	30 4	N/A	*	*	NA	NA	NA *	*	N/A*	N/A

[illegible]

[illegible]

[illegible][illegible]

(Issued by the Building Official)

[illegible]

ARTICLE 5: TREE AND HABITAT PROTECTION

DIVISION 1: GENERAL

Section 5.5.1.1 Purpose and applicability

Purpose. The purpose of this Article is to conserve, protect and enhance existing trees and natural landscape that are healthy and contribute to a safe and livable community. It is recognized that the preservation of existing trees contributes to the overall quality of life and environment of the City. Trees play a vital role in water and air quality. They protect the health of aquifers and river corridors set forth in Article 3 of this chapter, function in storm water management as well as erosion and dust control, abatement of noise, provision of wildlife habitat and enhancement of property values.

The existing natural landscape character, especially native oaks, elms, madrone, and pecan trees, shall be preserved to the maximum extent reasonable and feasible. For example, in an area of the street yard containing a stand of trees, the developer, and the builder shall use best good faith efforts to preserve such trees. Indiscriminate clearing or stripping of natural vegetation on a lot is prohibited. Any part of a site not used for buildings, parking, driveways, walkways, utilities, on-site septic facilities(OSSF) and approved storage areas shall be retained in a natural state, or reclaimed to its natural state, to the greatest extent feasible, or attractively landscaped in a manner that adds aesthetic value to the development.

Application. The provisions of this Section apply to all new nonresidential and residential development within the City and not within the ETJ. The responsible official shall be the Director of Development Services.

(Ord. No. 2006-45, § 43, 9-19-06)

DIVISION 2: TREE PRESERVATION AND PROTECTION

Section 5.5.2.1 General Tree Preservation Definitions

Caliper – means the American Nursery and Landscape Association (ANLA) standard for trunk measurement of nursery stock, as measured six inches above the ground for trees up to and including four inches caliper size, and as measured at 12 inches above the ground for larger sizes. For multi-trunk trees, the caliper shall be measured by using the diameter of the largest trunk and adding ½ the diameter of the remaining trunks.

Critical Root Zone – Area of undisturbed natural soil around a tree measured from the edge of the drip line to the trunk of the tree.

DBH – The International Society of Arboriculture (ISA) standard for trunk measurement of existing trees taken by measuring the diameter of the trunk at breast height (approximately 4.5 feet above ground height). For multi-trunk trees, the DBH shall be measured by using the diameter of the largest trunk and adding ½ the diameter of the remaining trunks.

Excluded Trees – Celtis Occidentalis (Hackberry), Juniperus Virginiana, Juniperus Ashei (Common Cedar), Chinaberry, mesquite, and Ligustrum

Protected Tree – Any tree with a DBH from nine to twenty-three inches, except for Excluded Trees.

Preserved Tree – A regulated tree that is to remain on the site after construction and for which no mitigation is required because preservation criteria in this Article are met.

Regulated Tree – A Significant Stand of Trees, a Specimen Tree, or a Protected Tree.

Significant Stand of Trees – A group of trees whose DBH total at least 24 inches within an area at least 100 square feet, where the center of each tree is no more than 10 feet from another tree.

Specimen Tree – Any tree with a DBH of twenty-four inches or greater, except for Excluded Trees.

Section 5.5.2.2 Tree Protection and Mitigation Standards

- (a) Removal of any regulated tree without City approval is expressly prohibited. The removal must be specifically requested by the applicant and approved in writing prior to any action being taken to remove the tree or to damage or disturb the tree in any way. If the request is not approved by the responsible official, the applicant may appeal the decision to the Planning and Zoning Commission.
- (b) An aerial photograph indicating the tree canopy shall be submitted with an application for a Watershed Protection Plan, Phase 1, together with a designation of the location of regulated trees in the area proposed for development.
- (c) The location of all regulated trees to be preserved or removed within the area proposed for development shall be designated on a Site Preparation Permit, a Watershed Protection Plan, Phase 2, or a building permit application (when exempt from Site Preparation Permit). Such trees shall be tagged and numbered, and numbers shall be graphically depicted on the applicable plan submitted. The tags and related numbers shall remain on the trees until the Certificate of Occupancy is issued.

(d) *Trees Mitigation Standards*

- (1) Mitigation for all removed regulated trees shall be implemented by replacing the removed trees with nursery stock whose calipers compensate for the DBH of the trees removed according to the ratios in Table 5-X: For example, mitigation for the removal of a 12" DBH tree can be accomplished using four 3" caliper trees.

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Tree Classification	Mitigation Ratio (DBH to Caliper)
Excluded Trees	N/A
Trees less than 9" in caliper	N/A
Significant Stand of Trees	1:1
Protected Trees	1:1
Specimen Trees	2:1

Table 5-X

(2) Exemptions: Excluded Trees and Protected Trees located within an area designated for the construction or installation of public facilities such as streets or utilities are exempt from mitigation.

(3) Mitigation shall be required for trees remaining on site that do not meet the preservation standards of this section. The Director may waive this requirement in certain situations where the applicant adequately demonstrates the tree's ultimate safe survival by providing documentation such as a letter from an ISA certified arborist outlining alternative preservation standards.

(e) Fee in Lieu When mitigation for regulated tree removal by replanting trees is not feasible, e.g., planting capacity has been reached on site, the Director may allow an applicant to pay a fee in lieu for all or part of the required mitigation. It is the responsibility of the applicant to demonstrate that replanting is not feasible by providing documentation such as a letter to that effect from a certified arborist. Payment per DBH inch of regulated trees removed shall be paid into the Tree Fund or account for use by the City for the planting, pruning, irrigation and other activities associated with trees in a City Park or on other City-owned property. The payment into the Tree Fund is nonrefundable. The Technical Manual lists the tree classifications with their applicable fees per DBH inch removed.

(a)(f) Protection of Trees during Construction.

(1) No more than 25% of the critical root zone of any preserved tree shall be disturbed. All protected-preserved trees next to an excavation site or to a construction site for any building, structure, or street work, shall be guarded with a good-substantial fence, frame, or box not less than four feet high and surrounding the trunk of the tree. In addition, at least three inches of mulch or compost shall be spread beneath the drip line of the tree in accordance with city details and standard specifications.

(2) The barriers-Protection shall be approved by the Planning-Director and shall be in place before any site clearance or other site-disturbing act commences.

(3) All building material, dirt, excavation or fill materials, chemicals, construction vehicles or equipment, debris, and other materials shall be kept outside the barrier.

(4) ~~Barriers-Protection~~ shall remain in place until the final building and landscape site inspections are satisfactorily completed for the issuance of the Certificate of Occupancy.

(b)(g) Action Around Protected-Preserved Trees. No person shall excavate any ditches, tunnels, or trenches, place any paving material, or place any drive within the protective zone of any ~~protected~~-Preserved tree without first obtaining a written permit from the Planning-Director.

(e)(h) Damage to Protected-Preserved Trees. Unless specifically authorized by the Planning-Director, no person shall intentionally damage, cut, carve, transplant, or remove any preserved tree or public tree or shrub; attach any rope, wire, nails, advertising posters, or other contrivance to any preserved tree or public tree or shrub; allow any gaseous, liquid or solid substance which is harmful to such plants to come in contact with them or with the soil; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any ~~protected~~-preserved tree or public tree or shrub.

(d)(i) Duty of Persons for Trees on Property.

(1) It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees, to prune such trees in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct the view from any street or alley intersection. The minimum clearance of any overhanging portion thereof shall be ten feet over sidewalks and 14 feet over all streets, except truck thoroughfares which shall require a clearance of 16 feet.

(2) It shall be the duty of any person or persons owning, occupying or controlling real property upon which tree trimming or removal occurs to advise all landscape contractors, tree services, arborists and others who remove or trim trees of the need for proper disinfection of all cutting tools and the required painting of all tree cuts on oak trees with a proper sealant immediately after cutting or pruning to prevent the spread of oak wilt and to ensure such sealing of cuts.

(f) Diseased or Dying Trees. In cases where a regulated tree is diseased or dying, ~~the Director may request the owner or representative to provide a letter, signed by an~~ ISA certified arborist, stating that the tree is dying, diseased, or a threat to the health, safety, or welfare of the public and may allow removal of such tree without mitigation.

(Ord. No. 2005-59, § 1, 8-16-05)

~~DIVISION 2: TREE PRESERVATION AND PROTECTION~~

~~Section 5.5.2.1 General Tree Preservation Requirements for New Nonresidential and Residential Development~~

- (a) ~~Application.~~ The provisions of this Section apply to all new nonresidential and residential development within the City and not within the ETJ. The responsible official shall be the Planning Director.
- (b) ~~Preservation of Existing Landscape.~~ The existing natural landscape character, especially native oaks, elms, madrone, and pecan trees, shall be preserved to the maximum extent reasonable and feasible. For example, in an area of the street yard containing a stand of trees, the developer, and the builder shall use best good faith efforts to preserve such trees. *Celtis Occidentalis* (Hackberry), *Juniperus Virginiana*, *Juniperus Ashei* (Common Cedar), Chinaberry, mesquite and *Ligustrum* with a caliper of less than 12 inches are excluded from this provision. Indiscriminate clearing or stripping of natural vegetation on a lot is prohibited. Any part of a site not used for buildings, parking, driveways, walkways, utilities and approved storage areas shall be retained in a natural state, or reclaimed to its natural state, to the greatest extent feasible, or attractively landscaped in a manner that adds aesthetic value to the development.
- (c) ~~Protected and Specimen Trees.~~
- (1) ~~For the purposes of this Article, the caliper of a single trunk tree shall be measured in accordance with the definition of "caliper" in Chapter 8 of this Code. The caliper of a multi-trunk tree shall be measured by the following equation: The caliper of the largest tree trunk, plus 1/2 the caliper of all other tree trunks. For example, a tree that has three trunks with calipers of 7", 6", and 4" would have a caliper of 12", or $7" + (1/2 \times 6") + (1/2 \times 4")$.~~
 - (2) ~~The removal of any tree with a caliper of nine inches or larger must be specifically requested by the applicant and approved in writing by the designated responsible official prior to any action being taken to remove the tree or to damage or disturb the tree in any way.~~
 - (3) ~~The removal of specimen trees, which for the purposes of these requirements are trees with 24-inch caliper or greater, must be specifically requested by the applicant and approved in writing by the designated responsible official prior to any action being taken to remove the tree or to damage or disturb the tree in any way. If the request is not approved by the designated responsible official, the applicant may appeal the decision to the Planning and Zoning Commission. Any specimen tree that is removed shall be replaced caliper for caliper (a ratio of one to one), even if the tree removed is within the building footprint area.~~
 - (4) ~~The location of all trees over nine inches in caliper to be preserved or removed within the area proposed for development shall be designated on an application for a Site Preparation Permit or a Watershed Protection Plan, Phase 2 (see Chapter 1, Article 7). An aerial photograph indicating the tree canopy shall be submitted with an application for a Watershed Protection Plan, Phase 1, together with a designation of the location of specimen trees in the area proposed for development. Removal of any such trees without City approval is expressly prohibited. Such trees shall be tagged and numbered, and numbers shall be graphically depicted on the applicable plan submitted. The tags and related numbers shall remain on the trees until the Certificate of Occupancy is issued.~~

Section 5.5.2.2 Tree Protection Standards -- Residential and Nonresidential Development

- (a) ~~Application.~~ The provisions of this Section apply to all new residential and nonresidential development within the City.
- (b) ~~Protection of Trees During Construction.~~
- (1) ~~All protected trees next to an excavation site or to a construction site for any building, structure, or street work, shall be guarded with a good substantial fence, frame, or box not less than four feet high and surrounding the trunk of the tree. In addition, at least three inches of mulch or compost shall be spread beneath the drip line of the tree.~~
 - (2) ~~The barriers shall be approved by the Planning Director and shall be in place before any site clearance or other site-disturbing act commences.~~
 - (3) ~~All building material, dirt, excavation or fill materials, chemicals, construction vehicles or equipment, debris, and other materials shall be kept outside the barrier.~~
 - (4) ~~Barriers shall remain in place until the final building and landscape site inspections are satisfactorily completed for the issuance of the Certificate of Occupancy.~~
- (c) ~~Action Around Protected Trees.~~ No person shall excavate any ditches, tunnels, or trenches, place any paving material, or place any drive within the protective zone of any protected tree without first obtaining a written permit from the Planning Director.
- (d) ~~Damage to Protected Trees.~~ Unless specifically authorized by the Planning Director, no person shall intentionally damage, cut, carve, transplant, or remove any public tree or shrub; attach any rope, wire, nails, advertising posters, or other contrivance to any public tree or shrub; allow any gaseous, liquid or solid substance which is harmful to such plants to come in contact with them or with the soil; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any protected tree or shrub.
- (e) ~~Duty of Persons for Trees on Property.~~
- (1) ~~It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees, to prune such trees in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct the view from any street or alley intersection. The minimum clearance of any overhanging portion thereof shall be ten feet over sidewalks and 14 feet over all streets, except truck thoroughfares which shall require a clearance of 16 feet.~~
 - (2) ~~It shall be the duty of any person or persons owning, occupying or controlling real property upon which tree trimming or removal occurs to advise all landscape contractors, tree services, arborists and others who remove or trim trees of the need for proper disinfection of all cutting tools and the required painting of all tree cuts on oak trees with a proper sealant immediately after cutting or pruning to prevent the spread of oak wilt and to ensure such sealing of cuts.~~
- (f) ~~Removing Tree(s) from Development Site(s).~~ The removal of an existing tree(s) from a development site must be in accordance with this and all other applicable ordinances of the City. Prior to the removal of any protected or specimen tree, as defined within this section, the property owner must first submit a letter to the Planning Director that describes in detail which tree(s) will be removed (as shown on a Site Preparation Permit

or Watershed Protection Plan, Phase 2, as applicable), how the removal will be performed (and machinery and equipment needed), and the date and time when the anticipated removal will occur. If a specimen or protected tree proposed for removal is not within a building footprint or within 10 feet of a building footprint, within the area over the septic system, within an area necessary for reasonable site access, or within an area designated for the construction or installation of public facilities such as streets or utilities, the letter must also include a notarized statement by the owner that the tree(s) to be removed is (are) either not a protected or specimen tree(s), as defined within this section, or that its (their) removal will be in complete conformance with the provisions of this section, and the letter must be accompanied by a recommendation for removal from a certified arborist or registered landscape architect. The letter must be submitted at least one week in advance of the removal operation.

~~(g) — Trees Within the Building Footprint or Within Site Access Areas.~~

- ~~(1) — Trees over nine inches in caliper but less than 24 inches in caliper that are located within a building footprint or within 10 feet of a building footprint, within the area over the septic system, or within areas necessary for reasonable site access (but not including parking areas), such as a driveway, shall not be required to be preserved or replaced.~~
- ~~(2) — Trees over nine inches in caliper but less than 24 inches in caliper that are located within areas designated for the construction or installation of public facilities such as streets or utilities, shall not be required to be preserved or replaced.~~
- ~~(3) — Trees over nine inches in caliper but less than 24 inches in caliper that are not located within a building footprint or within 10 feet of a building footprint, within the area over the septic system, within areas necessary for reasonable site access, or within areas designated for the construction or installation of public facilities such as streets or utilities, that the property owner requests and receives approval to remove may be removed, but shall be replaced on site at a ratio of two and one-half trees per tree removed and shall be credited toward the number of trees required for site development. Replacement trees shall have a minimum caliper of two inches.~~
- ~~(4) — Any specimen tree (24 inch caliper or greater) that is located within the building footprint, or areas necessary for site access (but not including parking areas), such as a driveway, shall not be required to be preserved. However, the tree that is removed shall be replaced caliper for caliper (a ratio of one to one). Trees removed shall be approved in accordance with Section 5.5.2.1.~~

(Ord. No. 2005-59, § 1, 8-16-05)

Section 5.5.2.3 Credits - Nonresidential and Multifamily Development

- ~~(a) — Application.~~ The provisions of this Section apply to all new nonresidential and multifamily development within the City.
- ~~(ab) Incentives to Retain Existing Trees.~~ As an incentive to retain existing trees in the street yard, exclusive of the trees contained in the buffer required under Section 5.2.7.1, the following shall apply:

- (1) In order to encourage the preservation of trees that are already established and growing, the additional credit as outlined below shall be given to healthy existing trees of a species listed on the Preferred Plant List in the Technical Manual.
- (2) Existing regulated trees shall ~~receive existing~~may be used as credit against the ~~landscaping requirements~~mitigation requirement according to the following schedule: Credit will be given on a 1:1 DBH per caliper basis but shall not exceed 50% of the required mitigation.
 - a. ~~Greater than 12-inch caliper: credit for two required trees.~~
 - b. ~~Greater than four-inch but less than 12-inch caliper: credit for one and one-half trees.~~
- (3) Any existing tree in the street yard which is at least six inches in caliper and at least 15 feet tall, shall be considered as two and one-half trees for the purposes of satisfying the requirements of Chapter 6, Article 1. Existing trees (except for Excluded Trees) may be counted toward the landscaping requirements in accordance with 6.1.1.4 (b) (4).
- (4) Any existing specimen ~~regulated~~ tree (24-inch caliper or greater) shall be considered as a 1:1 caliper for DBH per caliper match for the purposes of satisfying the requirements of Chapter 6, Article ~~16.1.1.4 (b) (1)~~. For example, a 24 inch caliper DBH tree can be counted for up to 12 trees that each have a two-inch caliper.

(c) ~~Exclusions. Celtis Occidentalis (hackberry), Juniperus Virginiana, Juniperis Ashei (Common Cedar), Chinaberry, Mesquite, and Ligustrum are excluded from this provision.~~

Section 6.7.2.1 Determination and Regulation of Size

- (a) *Zoning District Requirements if Applicable.* Lots shall conform to the minimum requirements of the established zoning district, if located within the City's corporate limits.
 - (b) *Street Frontage Required.* Each lot on a plat shall front onto a dedicated, improved public street in accordance with this Code. In all cases, single-family residential lots, except townhome lots, shall have a minimum of 35 feet of frontage, and nonresidential lots shall have a minimum of 50 feet of frontage, along a dedicated, improved street.
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Section 6.4.2.1 Noise

~~(a) (a) — Sound Pressure Noise Level Maximums. At no point at the bounding property line of any nonresidential use shall the sound pressure level exceed the decibel limits specified in the Octave Band groups designated in the following table: A person commits an offense by operating sound equipment at a business that produces sound:~~

- ~~(1) In excess of 85 decibels for a period exceeding one minute between the hours of 11:00 a.m. and 10:00 p.m., as measured at the property line of the business or beyond.~~
- ~~(2) In excess of 75 decibels for a period exceeding one minute between the hours of 10:00 p.m. and 11:00 a.m. as measured at the property line of the business or beyond.~~
- ~~(3) In excess of 63 decibels at any time as measured from within the property line of any residential zoning or use.~~

MAXIMUM PERMISSIBLE DAYTIME* OCTAVE BAND: DECIBEL LIMITS AT THE BOUNDING PROPERTY LINE**										
OCTAVE BAND (cps)		37	75	150	300	600	1200	2400	4800	A Scale
		75	150	300	600	1200	2400	4800	9600	
DECIBEL BAND LIMIT (db re 0.0002 Microbar)	86	76	70	65	63	58	55	53	65	

Note—"A scale" levels are provided for monitoring purposes only and are not applicable to detailed sound analysis.

* "Daytime" shall refer to the hours between sunrise and sunset on any given day.

** "Bounding Property Line" shall be interpreted as being at the near side of any street, alley, stream, or other permanently dedicated open space from the noise source when such open space exists between the property line of the noise source and adjacent property. When no such open space exists, the common line between two parcels of property shall be interpreted as the bounding property line.

~~(b) — Adjustments to the Previous Table. The following adjustments shall be made to the table of octave band decibel limits in determining compliance with the noise level standards:~~

- ~~(1) — When noise is present at nighttime, subtract 7db.~~
- ~~(2) — When noise contains strong pure tone components or is impulsive, that is when meter changes at ten decibels or more per second, subtract 7db.~~
- ~~(3) — When noise is present for not more than the following, add 10db:~~
 - ~~a. — One half minute in any 30 minute period~~
 - ~~b. — Five minutes in any one hour period~~
 - ~~c. — Ten minutes in any two hour period~~
 - ~~d. — 20 minutes in any four hour period~~

~~(be) — Noise Measurements. Measurement of noise shall be made with a sound level meter~~

using the "A" weighting network as specified by the American National Standards Institute, ~~on octave band analyzer meeting the standards prescribed by the American Standards Association.~~

(cd) *Exemptions.* The following uses and activities shall be exempt from the noise level regulations herein specified.

- (1) Noises not directly under control of the property user.
- (2) Noises emanating from construction and maintenance activities between the hours of 7:00 a.m. and 9:00 p.m. (daytime hours).
- (3) Noises of safety signals, warning devices and emergency pressure relief valves.
- (4) Transient noise of moving sources, such as automobiles, trucks, and airplanes (see other City of San Marcos ordinances for regulation of transient noise).
- ~~(5) Nuisance noises that are not directly related to or inherent to the land use or development, such as people assembling, music playing, or domestic animal noises (see other City of San Marcos ordinances for regulation of nuisance noise).~~

(Ord. No. 2006-45, § 55, 9-19-06)

ARTICLE 2: PARKING

DIVISION 1: OFF-STREET PARKING SPACES REQUIRED

Section 6.2.1.1 Spaces Required

Off-street parking spaces shall be provided in accordance with the requirements of this division in all zoning districts, except for the central business area. No off-street parking is required for properties in the CBA Central Business Area District. However, at the time any building or structure is erected or structurally altered outside the CBA Central Business Area District, or whenever a use in the CBA Central Business Area District is changed to a different use and any off-street parking is provided, the design standards of this division will apply.

(Ord. No. 2006-45, § 49, 9-19-06)

Section 6.2.1.2 Minimum Requirements and Standards

(a) ~~Minimum Requirements for Off-Street Parking.~~ Requirements are as follows (these requirements may be modified only as described in Section 4.5.3.7):

(b) No reduction Below Requirement

Existing parking and loading spaces may not be reduced below the requirements established in this Section without approval of an Alternative Parking Plan by the Director of Development Services or his or her designee.

(c) Maximum Above Requirement

If parking is provided in excess of 100 percent of the parking spaces required in the Off-Street Parking Requirements Table, buffer requirements will be increased by 25% in terms of width and tree and shrub plantings.

~~(1) Single-family attached and detached dwelling units: Two parking spaces per dwelling unit.~~

~~(2) For any multifamily, duplex, or two-family dwelling unit or condominium in any zoning district or for any structure altered into a multifamily dwelling from any other classification, off-street parking spaces shall be provided in accordance with the following schedule. For each:~~

~~a. Efficiency apartment: 1 1/2 spaces.~~

~~b. One-bedroom apartment: Two spaces.~~

~~c. Two-bedroom apartment: 2 1/2 spaces.~~

~~d. Three bedrooms or more: One space per bedroom.~~

~~e. Where offices are provided on the site, visitor parking must be provided as per the office parking requirements outlined in this Section. Where clubhouses are provided on the site, appropriate off-street parking must be provided as per the eating and drinking establishments requirements outlined in this Section.~~

- ~~(3) — Group home: Four spaces.~~
 - ~~(4) — Residential care facility: One space per each two persons capacity.~~
 - ~~(5) — High schools and vocational schools: One space for every three students, faculty and staff, based on maximum design capacity.~~
 - ~~(6) — All other schools: One space for each classroom plus one for each 15 students.~~
 - ~~(7) — Libraries, laboratories, and student centers: One space for each 300 square feet of floor area.~~
 - ~~(8) — Lodging houses and boarding houses: One space per each two persons capacity of overnight sleeping facilities.~~
 - ~~(9) — Residence halls, fraternity buildings, and sorority buildings: One space per person capacity of permanent sleeping facilities. Additional parking spaces may be required by the Planning and Zoning Commission for fraternity and sorority buildings as a condition of the Specific Use Permit where the building does not provide permanent sleeping facilities for all members of the organization.~~
 - ~~(10) — Subsections (7) through (10) of this Section shall not apply to private schools which do not permit students to bring motor vehicles to the institution; however, the educational institution shall be required to provide adequate off-street parking for faculty, administrative personnel, and athletic events including visiting of parents or other personnel. Requirement will be calculated based on the ordinance requirements for the individual uses.~~
 - ~~(11) — Dance, assembly and exhibition halls without fixed seats: One space for each 100 square feet used for assembly or dancing.~~
 - ~~(12) — Theaters, auditoriums, churches, assembly halls, sports arena, stadiums: One space for each four seats of capacity in the main auditorium, sanctuary, or other area containing fixed seating.~~
 - ~~(13) — Conference center/convention center: One space for each four seats or one space for every 100 square feet of gross floor area, based on maximum design capacity whichever is less.~~
 - ~~(14) — Office and professional uses outside the central business area, unless otherwise described in this Section, including but not limited to financial institutions, real estate offices, insurance agents, law offices, architects' offices, stock brokers, research services, administrative offices, etc.: One space for each 300 square feet of gross floor area.~~
 - ~~(15) — Retail and other commercial uses outside the central business area, unless otherwise described in this Section, including but not limited to department stores, clothing stores, grocery stores, pharmacies, convenience stores, bookstores, auto parts stores, general merchandise stores, business support services, laundry services, product repair services, barber and beauty shops, etc.: One space for each 250 square feet of gross floor area.~~
 - ~~(16) — Eating and drinking establishments: One parking space for each 100 square feet of gross floor area, or one space for each four seats, whichever is less. Where permanent outdoor seating areas including decks, patios, or other unenclosed spaces are provided, those areas shall be included in the calculation of gross~~
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~~floor area and total number of seats. Establishments having only outdoor dining consisting of fewer than 16 seats shall provide a minimum of four parking spaces.~~

- ~~(17) Take-out or drive-through eating establishments having no indoor dining: One parking space for each 50 square feet of floor space used or designated as customer service and waiting area, or four spaces, whichever is greater.~~
 - ~~(18) Hotel or motel: One parking space for each sleeping room or suite plus one space for each 200 square feet of commercial floor area contained therein.~~
 - ~~(19) Hospital: One parking space for each bed.~~
 - ~~(20) Sanitorium, convalescent home, home for the aged or similar institution: One parking space for each two beds.~~
 - ~~(21) Medical or dental clinic: Four spaces for each treatment room.~~
 - ~~(22) Bowling alley: Five parking spaces for each alley.~~
 - ~~(23) Mortuary or funeral home: One parking space for each 50 square feet of floor space in slumber room parlors or individual funeral service rooms.~~
 - ~~(24) Day care center or pre elementary school: One space per 300 square feet of gross floor area, plus a driveway providing separate points of ingress and egress to the premises and having a length sufficient for temporary parking of at least three vehicles whereby the temporary parking spaces do not block access to the other required off street parking spaces.~~
 - ~~(25) Manufacturing plants, research laboratories: One for each 1.5 employees in the maximum work shift.~~
 - ~~(26) Warehouses: One space for each 2,000 square feet of gross floor area excluding office space. Off street parking requirements for the office area of the use shall be determined in accordance with subsection (15) of this Section.~~
 - ~~(27) Vehicle sales or rental dealer: One parking space for employees and customers per 3,000 square feet of open sales lot and enclosed floor area devoted to the sale, display, or rental of motor vehicles, mobile homes, or trailers.~~
 - ~~(28) Vehicle repair facilities: One space for each 200 square feet of floor area devoted to vehicle repair, excluding office space. Off street parking requirements for the office area of the use shall be determined in accordance with subsection (15) of this Section.~~
 - ~~(29) Bus depot: One for each 100 square feet of floor area.~~
 - ~~(30) Lumberyard and building material sales and service facility: One space for each 300 square feet of gross floor area.~~
 - ~~(31) Recreation and amusement facilities occurring primarily outdoors, either separately or jointly, as the principal permanent use of the premises, as follows:~~
 - ~~a. Arcade: One space per 200 square feet of gross floor area.~~
 - ~~b. Sport fields, swimming pool, private parks and playgrounds: One space per 100 square feet of gross floor area of indoor facilities plus one space per four persons design capacity of outdoor facilities, including both~~
-

~~participants and spectators as applicable.~~

- ~~c. Tennis and other sport courts: Two spaces per court.~~
- ~~d. Golf course: One space per 150 square feet gross floor area of indoor facilities, plus five spaces per green.~~
- ~~e. Miniature golf: One space per 200 square feet gross floor area of indoor facilities, plus 1 1/2 spaces per hole.~~
- ~~f. Driving/archery/shooting range: One space per 200 feet gross floor area of indoor facilities, plus one space per tee or target.~~
- ~~g. Skateboarding, water slide: One space per 200 feet gross floor area of indoor facilities, plus one space per two persons design capacity of outdoor facilities.~~
- ~~h. Go carts and all-terrain vehicles: One space per two vehicles, plus one space per four spectator seats.~~
- ~~i. Rodeo, circus, auto/motorcycle racing: One space per three spectator seats.~~
- ~~j. Fairground, exhibition, carnival: One space per 500 square feet of outdoor site area, plus one space per four fixed spectator seats.~~
- ~~k. Any combination of the outdoor uses listed in this subsection on the same premises. The sum of the minimum requirements for the individual uses proportionate to the indoor and outdoor areas allocated for each use.~~

<u>Use</u>	<u>Minimum</u>
<u>Single-Family</u>	<u>2 spaces per dwelling unit</u>
<u>Multifamily</u>	<u>1 space per bedroom + 5% for visitors</u>
<u>Group Home</u>	<u>4 spaces</u>
<u>Residential Care Facility</u>	<u>1 space per two person capacity</u>
<u>High Schools and Vocational Schools*</u>	<u>1 space per 3 students, faculty, and staff, based on maximum design capacity</u>
<u>All Other Schools*</u>	<u>1 space per classroom plus 1 for each 15 students</u>
<u>Libraries, laboratories, and student centers*</u>	<u>1 space per 300 sf GFA</u>
<u>Lodging houses and boarding houses</u>	<u>1 space per 2 person capacity of overnight sleeping facilities</u>

<u>Residence halls, fraternity buildings, and sorority buildings</u>	<u>1 space per person capacity of permanent sleeping facilities. Additional parking spaces may be required by the Planning and Zoning Commission for fraternity and sorority buildings as a condition of the Conditional Use Permit where the building does not provide permanent sleeping facilities for all members of the organization.</u>
<u>Dance, assembly and exhibition halls without fixed seats</u>	<u>1 space per 100 sf used for assembly or dancing.</u>
<u>Theaters, auditoriums, churches, assembly halls, sports arena, stadiums</u>	<u>1 space per 4 seats of capacity in the main auditorium, sanctuary, or other area containing fixed seating.</u>
<u>Conference center/convention center</u>	<u>1 space per 4 seats or 1 space per 100 sf GFA, based on maximum design capacity whichever is less.</u>
<u>Office and professional uses outside the central business area, unless otherwise described in this Section, including but not limited to financial institutions, real estate offices, insurance agents, law offices, architects' offices, stock brokers, research services, administrative offices, etc</u>	<u>1 space per 300 sf GFA</u>
<u>Retail and other commercial uses outside the central business area, unless otherwise described in this Section, including but not limited to department stores, clothing stores, grocery stores, pharmacies, convenience stores, bookstores, auto parts stores, general merchandise stores, business support services, laundry services, product repair services, barber and beauty shops, etc.:</u>	<u>1 space per 250 sf GFA</u>

<u>Eating and drinking establishments</u>	<u>1 per 100 sf GFA, or 1 space for each 4 seats, whichever is less. Where permanent outdoor seating areas including decks, patios, or other unenclosed spaces are provided, those areas shall be included in the calculation of gross floor area and total number of seats. Establishments having only outdoor dining consisting of fewer than 16 seats shall provide a minimum of 4 parking spaces.</u>
<u>Take-out or drive-through eating establishments having no indoor dining:</u>	<u>1 parking space for each 50 square feet of floor space used or designated as customer service and waiting area, or 4 spaces, whichever is greater.</u>
<u>Hotel or motel:</u>	<u>1 space per sleeping room or suite plus 1 space per 200 sf of commercial floor area contained therein.</u>
<u>Hospital</u>	<u>1 space per bed.</u>
<u>Sanitorium, convalescent home, home for the aged or similar institution</u>	<u>1 space per 2 beds.</u>
<u>Medical or dental clinic</u>	<u>1 per 250 square feet</u>
<u>Bowling alley</u>	<u>5 spaces per alley</u>
<u>Mortuary or funeral home</u>	<u>1 space per 50 sf of floor space in slumber room parlors or individual funeral service rooms.</u>
<u>Day care center or pre-elementary school</u>	<u>1 space per 300 sf GFA, plus a driveway providing separate points of ingress and egress to the premises and having a length sufficient for temporary parking of at least three vehicles that do not block access to the other required off-street spaces.</u>
<u>Manufacturing plants, research laboratories</u>	<u>1 for each 1.5 employees in the maximum work shift.</u>
<u>Warehouses</u>	<u>1 space for each 2,000 SF GFA excluding office space, which shall be determined in accordance with number 14 of this Section.</u>
<u>Vehicle sales or rental dealer</u>	<u>1 space for employees and customers per 3,000 sf of open sales lot and enclosed floor area devoted to the sale, display, or rental of motor vehicles, mobile homes, or trailers.</u>

<u>Vehicle repair facilities</u>	<u>1 space per 200 sf of floor area devoted to vehicle repair, excluding office space, which shall be determined in accordance with number 14 of this Section.</u>
<u>Bus depot</u>	<u>1 space per 100 sf GFA</u>
<u>Lumberyard and building material sales and service facility</u>	<u>1 space per 300 sf GFA</u>
<u>Recreation and amusement facilities occurring primarily outdoors, either separately or jointly, as the principal permanent use of the premises, as follows:</u>	-
<u>Arcade</u>	<u>1 per 200 sf GFA</u>
<u>Sport fields, swimming pool, private parks and playgrounds</u>	<u>One space per 100 sf GFA of indoor facilities plus 1 space per 4 persons design capacity of outdoor facilities, including both participants and spectators as applicable.</u>
<u>Tennis and other sport courts</u>	<u>2 spaces per court</u>
<u>Golf Course</u>	<u>1 space per 150 sf GFA of indoor facilities, plus 5 spaces per green</u>
<u>Miniature Golf</u>	<u>1 space per 200 sf GFA of indoor facilities, plus 1.5 spaces per hole</u>
<u>Driving/archery/shooting range</u>	<u>1 space per 200 sf GFA of indoor facilities, plus 1 space per tee or target</u>
<u>Skateboarding</u>	<u>1 space per 200 sf GFA of indoor facilities, plus 1 space per 2 persons design capacity of outdoor facilities.</u>
<u>Go-carts and all-terrain vehicles</u>	<u>1 space per 2 vehicles, plus 1 space per 4 spectator seats.</u>
<u>Rodeo, circus, auto/motorcycle racing</u>	<u>1 space per 3 spectator seats</u>
<u>Fairground, exhibition, carnival</u>	<u>1 space per 500 sf of outside site area, plus 1 space per 4 fixed spectator seats</u>
<u>Any combination of the outdoor uses listed in this subsection on the same premises</u>	<u>The sum of the minimum requirements for the individual uses proportionate to the indoor and outdoor areas allocated for each use.</u>

* shall not apply to private schools which do not permit students to bring motor vehicles to the institution; however, the educational institution shall be required to provide adequate off-street parking for faculty, administrative personnel, and athletic events including visiting of parents or other personnel. Requirement will be calculated based on the ordinance requirements for the individual uses.

(d) Alternative Parking Plans

An alternative parking standard may be approved by the Director of Development Services or his or her designee for specific developments or uses that are deemed to require a different amount of parking than the standards shown in the Off-Street Parking Requirements Table. The Director shall establish conditions necessary to assure the adequacy of future on-site parking when approving an alternate parking standard. Potential alternative parking plan approaches and specific regulations are described below.

1. Parking Study Option

Parking studies may be required for specific uses that have characteristics that reduce the accuracy of standard requirements. Additionally, as an alternative, applicants for uses that appear on the requirements Table may choose to conduct a parking study to determine appropriate parking requirements. Many uses have widely varying parking demand characteristics, making it impossible to specify a single off-street parking standard. This option is intended to allow development to meet vehicle parking and transportation access needs by means other than providing parking spaces on-site in accordance with the ratios established above.

2. Parking Study

Anyone proposing to develop or expand a use based on this parking study option must submit a parking study that provides justification for the number of off-street parking spaces proposed. A parking study must include estimates of parking demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates as approved by the Director, and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. Comparability will be determined by density, scale, bulk, area, type of activity, and location. The study must document the source of data used to develop the recommendations.

3. Eligible Alternatives

A number of specific parking and access alternatives may be considered, including off-site, shared or valet parking. The Director shall be authorized to consider and approve any alternative to providing off-street parking spaces on the site of the subject development if the applicant demonstrates to the satisfaction of the Director that the proposed plan shall result in a better situation with respect to surrounding neighborhoods, city wide traffic circulation or urban design than would strict compliance with otherwise applicable off-street parking standards.

3. Review by Director

The Director shall review the parking study and any other traffic engineering and planning data relevant to the establishment of an appropriate off-street parking standard for the proposed use. After reviewing the parking study, the Director shall establish a minimum off-street parking standard for the proposed use.

(e). Off-Site Parking

Off-street parking spaces may be located on a separate lot from the lot on which the principal use is located if approved by the Director and if the off-site parking complies with the all of following standards.

1. Ineligible Activities Off-site parking may not be used to satisfy the off-street parking standards for residential uses (except for guest parking), restaurants (except in the Central Business Area), convenience stores or other convenience-oriented uses. Required parking spaces reserved for persons with disabilities shall not be located off-site.

2. Location No off-site parking space may be located more than 600 feet from the primary entrance of the use served unless shuttle bus service is provided to the remote parking area. Off-site parking spaces may not be separated from the use that it serves by a street right-of-way with a width of more than 80 feet, unless a grade-separated pedestrian walkway is provided, or other traffic control or shuttle bus service is provided to the remote parking area.

3. Zoning Classification Off-site parking areas serving uses located in Non-Residential Zoning Districts must be located in Non-Residential Zoning Districts. Off-site parking areas serving uses located in Residential Zoning Districts may be located in residential or Non-

Residential Zoning Districts.

4. Agreement for Off-Site Parking In the event that an off-site parking area is not under the same ownership as the principal use served, a written agreement will be required. An attested copy of the agreement between the owners of record must be submitted to the Director for recordation on forms made available by the Director. Recordation of the agreement with the County Clerk must take place before issuance of a Building Permit for any use to be served by the off-site parking area. An off-site parking agreement may be revoked only if all required off-street parking spaces will be provided in accordance with this Section.

(f). Shared Parking

It is the City's stated intention to encourage efficient use of land and resources by allowing users to share off-street parking facilities whenever feasible. Developments or uses with different operating hours or peak business periods may share off-street parking spaces if approved by the Director and if the shared parking complies with the all of following standards.

1. Location. Shared parking spaces must be located within 600 feet of the primary entrance of all uses served, unless remote parking shuttle bus service is provided.

2. Zoning Classification. Shared parking areas serving uses located in Non-Residential Zoning Districts must be located in Non-Residential Zoning Districts. Shared parking areas serving uses located in Residential Zoning Districts may be located in residential or Non-Residential Zoning Districts. Shared parking areas shall require the same or a more intensive zoning classification than that required for the most intensive of the uses served by the shared parking area.

3. Shared Parking Study. Those wishing to use shared parking as a means of satisfying off-street parking requirements must submit a shared parking analysis to the Director that clearly demonstrates the feasibility of shared parking. The study must be provided in a form established by the Director and made available to the public. It must address, at a minimum, the size and type of the proposed development, the composition of tenants the anticipated rate of parking turnover and the anticipated peak parking and traffic loads for all uses that will be sharing off-street parking spaces.

4. Agreement for Shared Parking. A shared parking plan will be enforced through written agreement among all owners of record. An attested copy of the agreement between the owners of record must be submitted to the Director for recordation on forms made available by the Director. Recordation of the agreement with the Recorder of Deeds must take place before issuance of a Building Permit for any use to be served by the off-site parking area. A shared parking agreement may be revoked only if all required off-street parking spaces will be provided in accordance with this Section.

5. Revocation of Permits.

Failure to comply with the shared parking provisions of this Section shall constitute a violation of this Code and shall specifically be cause for revocation of a certificate of zoning compliance and/or Building Permit.

(g). Transportation Management Plan. The Director may authorize a reduction in the number of required off-street parking spaces for developments or uses that institute and commit to maintain a transportation management program, in accordance with the standards of this Section.

1. Required Study. The applicant shall submit a study to the Director that clearly indicates the types of transportation management activities and measures proposed. The study shall be provided in a form established by the Director and made available to the public.

2. Transportation Management Activities. There shall be no limitation on the types of transportation management activities for which reductions may be granted from otherwise required off-street parking ratios. The following measures shall serve as a guide to eligible transportation management activities.

3. Transportation Coordinator. The occupant of the development or use may appoint an

employee to act as Transportation Coordinator with responsibility for disseminating information on ride-sharing and other transportation options may be cause for a reduction in otherwise applicable off -street parking requirements. In addition to acting as liaisons, Transportation Coordinators must be available to attend meetings and training sessions with the City or transit providers.

4. Off-Peak Work Hours. Employers that institute off -peak work schedules, allowing employees to arrive at times other than the peak morning commute period may be eligible for a reduction in otherwise applicable off -street parking requirements. The peak morning commute period is defined as 7:00–9:00 a.m.

5. Preferential Parking. The provision of specially marked spaces for each registered car pool and van pool may be cause for a reduction in otherwise applicable off -street parking requirements.

6. Financial Incentives. The provision of cash or in-kind financial incentives for employees commuting by car pool, van pool and transit may be cause for a reduction in otherwise applicable parking requirements.

- (h) *New or Unclassified Uses.* When a proposed land use is not classified in this Section, the parking requirements will be based on the minimum standard which applies to a specified use which is most closely related to the proposed land use, as determined by the Director.
- (i) *Parking on the Same Lot Required.* Except as provided in Chapter 1, Article 2 for circumstances that may be approved by the Zoning Board of Adjustments as a special exception, all required off-street parking spaces shall be located on the same lot or tract as the principal use being served by the parking area. All required parking shall be on a paved surface (see Division 3 of this Article).
- (j) *Off-Street Loading Requirements.* In all zoning districts there shall be provided, in connection with appropriate allowable uses, off-street loading facilities in accordance with the following: Any department store, industrial plant, manufacturing establishment, retail establishment, storage warehouse or wholesale establishment, which has an aggregate gross floor area of 10,000 square feet or more, arranged, intended or designed for the use shall be provided with off-street truck loading or unloading berths at least 12 feet wide, 14 feet high and 35 feet long in accordance with the following table. There shall be sufficient space to ensure that all maneuvering required to utilize the loading space will not include street right-of-way.

SQUARE FEET OF AGGREGATE GROSS FLOOR AREA	REQUIRED NUMBER OF BERTHS
10,000 to 40,000	1

40,001 to 100,000	2
100,001 to 160,000	3
160,001 to 240,000	4
240,001 to 320,000	5
320,001 to 400,000	6
400,001 to 490,000	7
For each additional 90,000 over 490,000, additional berth	1

(~~k~~e) *Off-Street Parking for Small Vehicles.* Any use other than single-family or duplex dwellings may provide up to 25% of the total off-street parking requirement in small or compact vehicle spaces.

(~~l~~f) *Off-Street Stacking Requirements.* Uses providing services or goods to occupants of vehicles, either parked or operating, and certain auto service uses shall provide adequate vehicle stacking or queing spaces. General design as well as standards for specific uses are found in the Technical Manual.

(~~Ord. No. 2006-10, § 1, 3-21-06; Ord. No. 2006-45, § 50, 9-19-06~~)

Section 4.5.3.7 Special Exceptions for Nonconforming Uses and Structures

- (a) Upon written request of the property owner, the Zoning Board of Adjustments (ZBOA) may grant special exceptions to the provisions of this Article, limited to and in accordance with the following:
- (1) Expansion of a nonconforming use within an existing structure provided that, in the case of a nonconforming residential use, such expansion does not increase the number of dwelling units to more than the number existing when the use first became nonconforming; or
 - (2) Expansion of the gross floor area of a nonconforming structure provided that such expansion does not decrease any existing setback.
 - (3) Change from one nonconforming use to another, re-construction of a nonconforming structure that has been totally destroyed, or resumption of a nonconforming use previously abandoned, only upon finding that the failure to grant the special exception deprives the property owner of substantially all use or economic value of the land.
 - (4) In granting special exceptions under this Section 4.5.3.7, the ZBOA may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which the nonconforming use may continue to operate or exist before being conformed to the standards of the Zoning Ordinance.
- (b) The ZBOA may grant special exceptions for the following:
- (1) Interpret the provisions of this Chapter in a way so as to carry out the intent and purpose of this Chapter, adjust districts where the street layout actually on the ground varies from the street layout as shown on the maps.
 - ~~(2) Waive or reduce the parking and loading requirements in an amount not exceeding 33% of the normal requirement in any of the districts for one or more of the following situations, whenever the character or use of the building makes unnecessary the full provision of parking or loading facilities or where the regulations would impose an unreasonable hardship upon the use of the property, as contrasted with merely granting an advantage or a convenience:~~
 - ~~a. Housing specifically designed and intended for use by the elderly, disabled, or other occupants typically having a lower expectation of automobile ownership;~~
 - ~~b. Adaptive reuse or restoration of an historically or architecturally significant structure;~~
 - ~~c. Expansion of a nonprofit, public or social service use on an existing site; and~~
 - ~~d. Conversion of a nonconforming use to what would otherwise be a conforming use, except for the parking and loading requirements.~~
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~~(3) To allow off-site parking where all or part of the minimum number of parking spaces required in Chapter 6, Article 2 (Parking) are located within 300 feet on a lot or tract of land that is legally separate from the property containing the principal use served by the parking area, provided that:~~

~~a. Both lots or tracts are under the same ownership; or~~

~~b. It can be established that two or more uses, applying jointly and concurrently for the special exception, will be sharing a parking area that is on property that is not under the same ownership and an arrangement is documented through a long term lease, easement, or other written agreement. Such exception may be granted only if the agreement provides that either:~~

~~1. The shared parking area has a capacity of at least the minimum number of spaces for the use having the greatest minimum requirement and all uses have their primary need for parking during offsetting periods so that the parking area will be utilized by only one principal use at a time, or~~

~~2. The parking area exceeds the requirements for the use on which the shared spaces are located sufficient to allow both uses full compliance when both properties needs are combined in the parking requirement calculation.~~

(2) Permit the reconstruction of a nonconforming building which has been damaged to the extent of more than 50% of its replacement cost.

~~(5-3)~~ If no structural alterations are made, any nonconforming use of a structure or structure and premises in combination may, as a special exception, be changed to another nonconforming use, provided the Zoning Board of Adjustments finds that the proposed nonconforming use is not more nonconforming in the district than the previously existing nonconforming use.

~~(6 4)~~ Permit the City to issue a building permit for expansion of a preexisting nonconforming use that is not in compliance with the Future Land Use Plan Map and/or zoning district when the Zoning Board of Adjustments determines that this special exception will not adversely impact water, wastewater, drainage, and street transportation systems, and is in accord with all City codes and applicable Master Plan policies, including those pertaining specifically to land use compatibility. Adverse impact means any of the following conditions which can be reasonably expected to result from the proposed development:

a. *Wastewater.* A septic system within 300 feet of an existing sewer line; any use whose proposed connection to a sewer system (wastewater collection and treatment system) which is now at or beyond its capacity as calculated using state department of water resources standards design criteria, including a sewer line or pipe which overflows primarily due to infiltration and inflow; any use which cannot be served adequately without the expenditure of City funds in excess of the amount paid by the user's capital recovery fees; any use whose plumbing and wastewater system does not conform to City specifications; any use which would create off site any one of the conditions listed in this subsection.

b. *Water.* Lowering water quantity, quality, or water pressure below the

standards established by the Master Plan, adopted in City codes, or as determined by applicable agencies of the state; and water demand on an existing water system which is below established standards (water demand includes that required to adequately fight fires).

- c. *Drainage.* Nonconformance to the purposes, interests, or requirements of Chapter 5 pertaining to drainage and erosion control; preventing flood damage; creating additional runoff into a drainage system which is inadequate or nonexistent, or cause it to become inadequate in terms of its ability to handle runoff without causing flooding, soil erosion, property damage or hazard to life, or which retains water in any area which by design is not specifically allowed by the City to retain water; creating runoff which measurably harms the physical or biological integrity of the San Marcos River or Blanco River ecosystem.
- d. *Transportation.* Creating or increasing an unsafe condition; nonconformance to adopted City ordinances concerning construction materials and design of roadways or pedestrian ways; generating or attracting daily vehicular traffic which causes a roadway's capacity to be exceeded; creating commercial through truck traffic (other than moving vans and garbage trucks) on any local residential street; contributing to or creating a road maintenance problem which would require City funds to be expended within four years to correct the condition.
- e. Establishes an increased negative impact on the public health, safety or welfare.

(Ord. No. 2006-45, § 41, 9-19-06)

Section 7.4.2.3 General Requirements for Sidewalks

- (a) *Required in Subdivisions.* Sidewalks are required in all subdivisions except in residential areas where all lots are equal to or exceed one acre.
- (b) *Installation.* Sidewalks shall be installed as follows:
 - (1) Sidewalks shall be located on the front of lots and along the street sides of corner lots.
 - (2) Sidewalks shall be constructed in compliance with the width and location requirements indicated in the TCSS.
- (c) *Requirements for Sidewalks in Existing Platted Subdivisions.* Sidewalks are required on all existing vacant lots, and on all lots on which any development or redevelopment activities are planned, in accordance with subsection (b) above, and construction of required sidewalks shall be completed prior to the issuance of a certificate of occupancy for construction of the new building or acceptance of site improvements.
 - (1) Exceptions. Sidewalks are not required to be constructed in the following cases:
 - a. The only improvements planned are the remodeling or renovation of an existing building.
 - b. The only improvements planned are site improvements on a residential lot not involving the construction or expansion of floor area of a residential structure where there is no existing sidewalk on the same side of the street within the same block as the lot on which the improvements are planned.
- (d) *Site Layout, Construction and Drainage of Sidewalks.* Sidewalks shall be constructed in accordance with the TCSS, and as required by the Engineering Director. Where sidewalks are installed, the following minimum requirements shall be met:
 - (1) *Sidewalk permits required.* Unless sidewalk construction plans are approved as part of subdivision construction plans or building permit plans, a separate permit shall be issued by the Engineering Director for all sidewalk construction installed within City right-of-way, easements or property.
 - (2) *Widths and location.* Where sidewalks are installed, the following minimum widths and locations shall be required:
 - a. Sidewalks shall be constructed in compliance with the width and location specifications indicated in the TCSS.
 - b. Wherever water from roof or adjacent buildings is drained or conducted under sidewalks through aqueducts or concrete troughs, any openings in the sidewalks shall be fitted with strong metal covers which shall be securely held in place with screws or other fasteners that will not rust or corrode. The covers shall be set flush with the surface of the sidewalk and securely bolted, fastened or so constructed that they cannot slip, shift or lose alignment with the surface of the sidewalk. Downspouts shall not drain across the surface of sidewalks or pedestrian ways.
- (e) *Sidewalk Ramps.* Sidewalks constructed to the requirements in this section shall include

a standard sidewalk pedestrian ramp whenever a curb return or other structure may present an architectural barrier to handicapped access within a pedestrian path or at street/sidewalk intersections constructed in accordance with ADA requirements.

(f) *Fee in Lieu of Dedication.* A cash fee for the installation of offsite sidewalks may be paid in lieu of all or part of the sidewalks required under Section 7.4.2.3(b)(1). The cash fee in lieu of sidewalk installation shall be set by resolution of the City Council (see the Technical Manual). All fees in lieu of installation shall be paid prior to the issuance of a building permit. Fees in lieu of installation may be accepted if the Director consents. In evaluating the request, the Director shall consider:

- (1) Proximity to the nearest existing sidewalk;
- (2) Proximity to public facilities, such as public or private schools, libraries and other government buildings;
- (3) Whether any public sidewalk improvements are planned or contemplated in the area; and
- (4) Any other information deemed appropriate in the professional judgment of the Director.

(g) *Sidewalk Benefit Areas.* The City shall establish a separate sidewalk account. The funds in the account shall be earmarked solely for the development of sidewalks either in the same sector in which the lot is located, or for regional sidewalk connectivity that will benefit all of the citizens of San Marcos. The City shall expend cash contributions within ten years of the date any such contribution is made.

- (t) *Street Signs.* Street signs shall be installed by the developer at all intersections within and abutting the subdivision. These signs shall be of a type approved by the City, and shall be installed according to City standards.
- (u) *Streetlights.* Streetlights shall be installed by the developer at all intersections and at the ends of cul-de-sacs, and shall have no greater distance than ~~600~~400 feet between them within or abutting the subdivision. Street Lighting inside the City Limits and within the ETJ of the City of San Marcos shall be installed and suitable to accept power by the developer or property owner of new residential, commercial, or industrial developments at all intersections and at the end of cul-de-sacs, and shall have no greater distance than 400 feet between the fixtures within or abutting the subdivision. Poles shall be located a minimum of two feet behind existing or planned curbs or sidewalks on public rights-of-way. Street lighting structures shall use 100 watt or 250 watt high-pressure sodium (HPS), full cut-off luminaires at an allowable voltage of 120 volts, each controlled by individual photocells, and in accordance with the City of San Marcos Electric Utilities Underground Installation Specifications. Street lights shall be fully shielded in such a manner that light emitted by the fixture, either from the lamp or indirectly from the luminaire, is projected below a horizontal plane running through the lowest point on the fixture where light is emitted. All street light installations shall be in accordance with the National Electrical Code and National Electrical Safety Code, and shall also conform to City laws, codes and specifications governing such work. Variances in street lighting installations will be administered by The Electric Utility Division of the City of San Marcos Public Services Department on a case by case basis. All street lights shall be connected, by the serving utility, to the permanent power supply and function properly prior to final acceptance. Service to locations where City electric utility facilities are not available will be made at the discretion of The Electric Utility Division of the City of San Marcos Public Services Department and at an additional charge, per existing tariffs, to the developer or property owner to cover the costs of installation and maintenance, including appropriate overheads, additional poles, conductors, other facilities, and increased maintenance expenses. State or Federal street lighting requirements supersede this ordinance.
- (v) *Access Management.* Access management standards and requirements related to TXDOT roadways shall be in accordance with the standards adopted in the TXDOT Access Manual. Access management standards and requirements related to City roadways shall be in accordance with the TCSS Manual and Chapter 7, Article 4, Division 2 (Driveways) of this Land Development Code.
- (w) *Screening Along Arterial Roadways.* Screening requirements for arterial roadways shall be in accordance with Section 6.1.2.3.

(Ord. No. 2005-59, § 7, 8-16-05; Ord. No. 2006-45, § 62, 9-19-06)

Section 5.1.1.5a Requirements and Standards for BMPs

- (a) Best management practices or BMPs means activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of streams and rivers. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- (b) Installation of BMPs. If impervious cover at the site of a development exceeds 15 percent on the approved Watershed Protection Plan (Phase 1, Phase 2, or Qualified) for the development, permanent BMPs must be installed in accordance with the approved Watershed Protection Plan (Phase 1, Phase 2, or Qualified) in order to mitigate the water quality impacts of the development. The permanent BMPs must limit the increase in the total suspended solids load in drainage from the site that results from the development to no more than 15 percent above that which would occur from natural drainage from the site.
- (c) BMPs in Accordance With Industry Standard Guidelines. All temporary and permanent BMPs required in the approved Watershed Protection Plan (Phase 1, Phase 2, or Qualified) must be constructed, operated and maintained in accordance with locally appropriate standards, criteria and requirements in TCEQ, EPA Region 6 Low Impact Development (LID), Center for Watershed Protection (CWP), or City of Austin manuals. Multiple BMPs in series are encouraged in accordance with the Technical Manual.

If alternative BMP technology other than those expressly approved in the referenced standards, the method(s) must be approved by the Director. Documentation that adequately demonstrates the proven efficiency of the BMP will be required.
- (d) Exclusion. If a Watershed Protection Plan (Phase 1, Phase 2, or Qualified) shows less than 15 percent impervious cover for a site, the proposed plan may eliminate information pertaining to the provision of permanent BMPs.

Section 5.1.2.6 Additional Performance Standards in Water Quality and Buffer Zones

- (a) *Ground Cover.* Water quality zones and buffer zones shall be stabilized with native vegetation to achieve a 70 percent ground cover, or, if ground cover vegetation was less than 70 percent prior to construction, to a coverage level consistent with a stable undisturbed condition. Areas disturbed during construction activities shall be restored to the same standard.
- (b) *Point Discharges.* New point discharges of runoff into water quality or buffer zones shall be dissipated to sheet flow conditions throughout the zone.
- (c) *Restrictions.* The use of fertilizers and pesticides shall be prohibited within water quality or buffer zones.
- (d) *Excavation and Fill.* Excavation and fill within water quality or buffer zones shall be allowed only in conformity with the standards in Article 4, Division 2 of this Chapter 5.

ARTICLE 2: DEVELOPMENT RELATED TO THE EDWARDS AQUIFER

DIVISION 1: GENERAL

Section 5.2.1.1 Applicability and Authority

- (a) *Applicability.* The standards contained in this Article 2 apply to the recharge, transition, and ~~upland~~ contributing zones (including the contributing zone within the transition zone) of the Edwards Aquifer.
- (b) *Authority.* The requirements of this Article are authorized under Tex. Water Code Sections 16.316 and 26.177(b), and Tex. Loc. Gov't Code ch. 212.

DIVISION 2: DEVELOPMENT DUTIES

Section 5.2.2.1 Duties in Undertaking Development Over Aquifer

- (a) *Excavations in recharge zone, contributing zone, or transition zone.*
 - (1) When a development in the recharge zone, contributing zone, or transition zone includes any excavation, the person performing the development must either engage a qualified geologist to inspect the excavation, or notify the Engineering Director to arrange for inspection of the excavation by City personnel. The inspection will be for the purpose of determining whether the excavation has uncovered any geologic or manmade feature that presents a possible avenue for recharge to the aquifer. The inspection will be made either upon completion of the excavation, if it is in a single, defined area, or in segments, if the excavation is linear, or is in multiple locations, or is accomplished over an extended period of time. The excavation may be temporarily backfilled before inspection, but inspection must occur with the full excavation uncovered before permanent backfilling is performed. If an inspection reveals that one or more such features has been uncovered, the person performing the development must:
 - a. Immediately notify the Engineering Director;
 - b. Utilize temporary BMPs to prevent pollution from entering the aquifer through the features; and
 - c. Not perform any further work in the excavation until an application for an amendment to the approved Watershed Protection Plan (Phase 1, Phase 2, or Qualified, as applicable), for a development in the recharge zone, or an application for approval of a Site Preparation Permit, for a development in the transition zone, is submitted to and approved by the Engineering Director.
 - (b) *Discovery of Sensitive Feature in Recharge Zone, Contributing Zone, or Transition Zone.*
 - (1) If a new sensitive feature, or any solution opening, cave, sinkhole, or similar feature, is encountered on a site in the recharge zone, contributing zone, or transition zone during the construction process for a development, or if a previously known sensitive feature is found in the course of construction to be larger or more extensive than previously noted in the geologic assessment of the
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site, the holder or the holder's designated representative must:

- a. Immediately suspend all excavation and construction activities within 50 feet of the feature, measured horizontally;
 - b. Immediately notify the Engineering Director of the discovery; and
 - c. Retain a qualified geologist to inspect the feature and make a recommendation to the Engineering Director based on the relative sensitivity of the feature.
- (2) The Engineering Director may require, for a development in the recharge, contributing, or transition zone, that the holder submit an application to amend the approved Watershed Protection Plan or Site Preparation Permit to adequately protect a feature encountered or found under subsection (b)(1) above. For development with an approved Watershed Protection Plan including a geological assessment, the Engineering Director will review the available information and within two working days of notification of the feature, will decide whether to allow construction activities to resume near the feature pending the amendment, and if so, at what locations. The Engineering Director will review and approve or deny a requested amendment to Watershed Protection Plan or Site Preparation Permit within five working days of submission of a geologic assessment if not included with the original application. The holder may appeal a denial in accordance with Chapter 1, Article 7.

Waiver to Watershed Protection Plan: For development applications proposing solely the construction or expansion of a single-family home on a lot legally platted in the recharge zone on or after March 1, 2000, the applicant is not required to submit a Watershed Protection Plan. A Site Preparation Permit for such an application must be submitted for approval in compliance with the Technical Manual.

Geologic Assessments. All Watershed Protection Plans (Phase 1) for developments in the recharge zone or contributing zone and Site Preparation Permit for uses, other than a single-family residence, must be accompanied by a geologic assessment of the entire site prepared by a qualified geologist. The assessment must be based on 50-foot transects across the site, and must contain all information required for geologic assessments under the TCEQ Edwards Aquifer rules. The assessment must identify all sensitive features on the site, and for each sensitive feature, must state whether it is a major recharge feature, moderate recharge feature, or minor recharge feature.

Enhanced Geologic Assessment. A Watershed Protection Plan (Phase 2) for a development in the recharge zone or contributing zone may be accompanied by an enhanced geologic assessment of the site prepared by a qualified geologist. The enhanced assessment is subject to review and approval by the Engineering Director as part of the approval process for the Watershed Protection Plan (Phase 2). The enhanced assessment must meet the requirements for assessments under (c) above, and in addition, must meet the following:

- (1) All caves that can be entered must be entered and mapped to establish the footprint of the cave, and to identify related surface hydrogeologic features (drainage areas, sinkholes, fractures, etc.) and cultural features (existing or proposed roads, buildings, utilities, etc.). Hydrogeologic features within each cave must be mapped or noted and interpreted to delineate the drainage area for the cave, which includes surface drainage into the cave's entrance(s), plus surface drainage into fractures, sinkholes, streambeds, or other features which

appear to contribute recharge into the cave in areas beyond the cave entrance. Excavations must be conducted as part of the effort to fully map the caves when necessary for study and mapping of otherwise inaccessible parts of the caves. Where excavation may be unsafe, such as a passage that ends in collapse and likely continues on the opposite side of the collapse, geophysical methods should be employed to determine if and where the cave continues. The geophysical methods must be of a type that has proven accurate and appropriate for the depth, size, and geologic setting of the cave. The geophysical methods should not be used to replace mapping of the cave, but to supplement them and identify areas where excavation or drilling may find the continuation of the cave to allow its further mapping and study.

- (2) Recharge features that cannot be entered must be excavated to more fully evaluate the hydrogeologic significance of the features, and to determine if they lead to caves. Excavations may be conducted by hand, explosive, and/or mechanized means as appropriate. Excavations will be considered complete if a cave, or bedrock with no openings, or a compact clay at least one foot thick throughout the feature's floors and walls, is found. Where fractures or other openings in the bedrock extend indefinite distances with no fill material or loose fill material, and hydrogeologic indicators suggest the feature may lead to a cave, then geophysical methods should be employed to determine if and where a cave is present to guide further excavation and study.

DIVISION 4: BEST MANAGEMENT PRACTICES (BMPs)

Section 5.2.4.1 Requirements and Standards for BMPs

- (a) *Best management practices* or *BMPs* means activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the Edwards Aquifer and hydrologically connected surface streams. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs are described in the TCEQ BMP Guidance Manual.
 - (b) *Installation of BMPs.* If impervious cover at the site of a development in the recharge zone or contributing zone equals or exceeds 15 percent on the approved Watershed Protection Plan (Phase 1, Phase 2, or Qualified) for the development, permanent BMPs must be installed in accordance with the approved Watershed Protection Plan (Phase 1, Phase 2, or Qualified) in order to mitigate the water quality impacts of the development. The permanent BMPs must limit the increase in the total suspended solids load in drainage from the site that results from the development to no more than ~~20~~ 15 percent above that which would occur from natural drainage from the site.
 - (c) *BMPs in Accordance With TCEQ Rules.* All temporary and permanent BMPs required in the approved Watershed Protection Plan (Phase 1, Phase 2, or Qualified) must be constructed, operated and maintained in accordance with the standards, criteria and requirements in the TCEQ Edwards Aquifer rules and the TCEQ BMP guidance manual.
 - (d) *Exclusion.* If a Watershed Protection Plan (Phase 1, Phase 2, or Qualified) shows less than 15 percent impervious cover for a site, the proposed plan may eliminate information pertaining to the provision of permanent BMPs.
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DIVISION 5: TEMPORARY EROSION AND SEDIMENTATION CONTROLS

Section 5.2.5.1 Requirements for Developments Not Covered by a Watershed Protection Plan

- (a) *Temporary Controls Required.* Temporary erosion and sedimentation controls are required to be installed and maintained for the following activities that may not covered by any type of Watershed Protection Plan, if they occur in the recharge zone, contributing zone, or ~~in an area of the transition zone that drains across the recharge zone~~:
- (1) The construction or expansion of one single family home or accessory structure on a legally platted lot, or on an unsubdivided tract of land at least two acres in size, for which a legal description was contained in a deed recorded before March 1, 2000.
 - (2) The installation or maintenance of utility lines by a governmental entity.
 - (3) Landscaping activities involving more than 5,000 square feet of area of landscape installation.
 - (4) The resurfacing of existing paved roads, parking lots, sidewalks, or other development-related impervious surfaces.
- (b) *Temporary Controls Required.* Temporary erosion and sedimentation controls are required to be installed and maintained for a development that is not required to be covered by any type of Watershed Protection Plan, if the activities occur in the recharge zone, contributing zone, or ~~in an area of the transition zone that drains across the recharge zone~~.
- (c) *Standards.* All temporary erosion and sedimentation controls required under this Section must:
- (1) Meet the applicable standards and requirements of the TCEQ Edwards Aquifer rules and the TCEQ BMP guidance manual;
 - (2) Be installed prior to commencing construction;
 - (3) Be maintained during construction; and
 - (4) Not be removed until vegetation is established and the construction area is stabilized.

Monitoring. The Engineering Director will monitor stormwater discharges from these activities to evaluate the adequacy of the temporary erosion and sedimentation control measures. The Engineering Director may require the person performing the activity to use additional controls if the Engineering Director determines that the controls used by the person are inadequate to protect water quality.

DIVISION 7: BUFFER AND PROTECTION ZONES

Section 5.2.7.1 Buffer Zones

- (a) *Buffer Zones Established.* A buffer zone is established along each minor waterway, intermediate waterway and major waterway in the recharge zone. The buffer zone is 100 feet wide, measured horizontally, along each side of the water quality zone for each minor, intermediate and major waterway.
- (b) *Impervious Cover Limitation.* Impervious cover is limited to ten percent of the area of a site within a buffer zone, unless the area has a slope of 20 percent or more. If an applicant obtains approval for a mitigation plan in accordance with subsection (d), impervious cover within the buffer zone on a site, other than in an area with a slope of 20 percent or more, may be increased to 20 percent. In a portion of a buffer zone that has a slope of 20 percent or more, no impervious cover is allowed unless the applicant obtains approval for a mitigation plan in accordance with subsection (d), in which event impervious cover is limited to ten percent.

Development standards near floodways. For development in buffer zones adjacent to a 100-year floodplain that is 50 feet or less in width next to a floodway:

- (1) The ten percent limit on impervious cover is absolute;
- (2) All drainage from impervious cover in such areas must be directed away from the waterway; and
- (3) A mitigation plan for the drainage, prepared in accordance with subsection (d) must be submitted for approval.

Mitigation plan. A Watershed Protection Plan (Qualified, refer to Section 1.7.1.4 of this Land Development Code) for a development in the recharge zone or contributing zone may be accompanied by a mitigation plan for improvements on the site that are proposed within a buffer zone. The mitigation plan must be prepared by a Texas-licensed engineer, or by such an engineer and a Texas-registered landscape architect, and must describe temporary and permanent mitigation measures to be installed and maintained at the site. A mitigation plan may consist of landscaping practices and features that perform an active filtration function for runoff from improvements, or BMPs, or both. To be approved, a mitigation plan must demonstrate to the satisfaction of the Engineering Director that the mitigation measures are designed, and will function, in a manner that provides for removal of contaminants from runoff from the site to the same extent as, or to a greater extent than, the installation and maintenance of a native grass surface within the entire width of the buffer zone.

Section 5.2.7.2 Sensitive Feature Protection Zones

- (a) *Sensitive Feature Protection Zones Established.* A sensitive feature protection zone shall be established around each sensitive feature in the recharge zone or contributing zone. Unless an applicant submits an enhanced geologic assessment of a feature in accordance with Section 5.2.2.1(d), or an enhanced topographic information in accordance with subsection (c) of this Section, the area of the zones shall be determined as follows (all measurements are to be made horizontally):
 - (1) Around a minor recharge feature, the zone shall extend 50 feet around the

perimeter of the feature, and an additional 25 feet on the upstream side of the feature.

- (2) Around a moderate recharge feature, the zone shall extend 100 feet around the perimeter of the feature, and an additional 50 feet on the upstream side of the feature.
- (3) Around a major recharge feature, the zone shall extend 200 feet around the perimeter of the feature, and an additional 100 feet on the upstream side of the feature.

- (b) *Enhanced Geologic Assessments.* If an applicant obtains the Engineering Director's approval of an enhanced geologic assessment for a feature in accordance with Section 5.2.2.1(d), the area of the sensitive feature protection zone for a feature shall be the area identified by the assessment as contributing significantly to recharge through the feature.

Enhanced topographic information. If an applicant submits enhanced topographic information for a site, with contour intervals of two feet or less, the sensitive feature protection zone shall be the area within the following distance of a sensitive feature that is identified on the enhanced topographic survey as draining towards the feature:

- (1) For a minor recharge feature, 75 feet.
- (2) For a moderate recharge feature, 150 feet.
- (3) For a major recharge feature, 300 feet.

Impervious cover limitations. No development or impervious cover is allowed within a sensitive feature protection zone, except for the following:

- (1) Fences that do not obstruct surface water flows.
- (2) Trails and other facilities, other than buildings, for walking, running, or non-motorized biking.

Section 5.2.8.3 Parkland Credits

- (a) *Parkland Dedication Credit.* Land included in water quality zones, buffer zones, and sensitive feature protection zones may be used to meet up to 75 percent of the parkland dedication requirements for sites that are being platted in accordance with Chapter 7, Article 6 of this Land Development Code under the following circumstances:
- (1) The Commission, after receiving the recommendation of the Parks Advisory Board, Director of Parks and Recreation, must find that the dedication of the land as parkland is in the public interest;
 - (2) Parkland dedicated under this subsection must be dedicated in accordance with Chapter 7, Article 6, and must be designated as both parkland and permanent open space; and
 - (3) Only minimal trail improvements and low-impact recreational uses that are consistent with the water quality protection function of the zones will be allowed in areas that are dedicated as parkland and open space under this provision.
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Section 5.1.1.3 Runoff Attenuation

- (a) *Techniques to Minimize Erosion.* Under this Chapter, all drainage channels on the site shall be designed to minimize potential erosion. In addition to standards in Section 5.1.1.2, the following runoff attenuation strategies and techniques shall be used:
- (1) All constructed and altered drainage channels shall be stabilized and vegetated immediately after final grading.
 - (2) Effective energy dissipation techniques must be used at inlets to and outlets from ponds. Inlets to ponds must also have sediment traps, with a wall or gabions, designed to trap the bulk of sediments and facilitate sediment removal.
 - (3) Velocity checks must be made on channel slopes over 2%.
 - (4) For channels with slopes over three percent and with non-erodable velocities (less than six feet per second), a rock pilot channel must be used to stabilize the channel bed.
 - (5) Sediment and litter traps are required at the discharge point of parking areas for commercial, industrial, and multifamily uses.
 - (6) Storm drain inlets for all development except for single-family and two-family residential development must be equipped with inlet baskets to capture litter from parking areas.
- (b) *Detention Required.* Drainage facilities will be designed and constructed so that the rate of runoff at each existing discharge location from a site after construction shall be equal to or less than the site's runoff prior to construction. Rate of runoff shall be computed on a 25-year storm peak flow using the City of Austin Drainage Criteria Manual, ~~if a separate water quality pond is required for the development. If a separate water quality pond is not required, the rate of runoff shall be computed on both a two-year and a 25-year peak storm flow using the City of Austin Drainage Criteria Manual.~~ Computation of the rate of runoff shall be based on an assumption of a fully developed contributing drainage area or watershed.
- (c) *Waiver of Detention.* Detention will be waived for single-family residential and small projects with less than 5,000 square feet of impervious cover, including buildings, parking lots and sidewalks. Runoff from development shall be discharged as sheet flow through grass areas to reduce peak runoff rates and provide for filtering of sediments prior to exiting property.

Chapter 8 Definitions

147. *Intermediate waterway* means any river, creek, stream, channel, or other waterway ~~over the Edwards Aquifer~~ that drains a watershed of at least 250 acres and no more than 1,000 acres.
 160. *Major waterway* means any river, creek, stream, channel or other waterway ~~over the Edwards Aquifer~~ that drains a watershed of 1,000 acres or more.
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MEMO

TO: PLANNING AND ZONING COMMISSIONERS
FROM: Chuck Swallow, Director of Development Services
DATE: June 17, 2010
RE: Discussion and consideration of a proposed Pro Rata Ordinance

Previously, the staff has held a concept discussion with the Planning and Zoning Commission about the possibility of adopting a pro rata ordinance. The intent of the proposed ordinance would be to provide a method to reimburse a developer for the cost of extending a water or sewer line to property past other benefiting properties. During the June 22 Planning and Zoning Commission, staff will hold discussion with the commissioners about the final draft of that proposed ordinance.

Elements of the proposed ordinance are as follows:

- City has sole discretion to approve pro rata fee request
- Developer is reimbursed eligible costs of construction not to include engineering fees
- 10 year reimbursement period
- 2% admin fee to city
- Front footage assessment against properties eligible to be served by the line
- City discretion to use alternate fee calculation for irregular shaped lots
- City may make adjustments for fees against individual properties when it is determined a property will not get comparable beneficial use of the line
- Developer has no recourse against city for failure of fees collected to meet expectations
- When city does oversize participation, it may recover proportionate share from pro rata fees
- Requests for pro rata assessments by a developer are processed through development services so it can be tied to development process. Development Services would be responsible to coordinate with W/WW department.

DIVISION 2. WATER AND WASTEWATER LINE EXTENSIONS

Sec. 86.002. Processing of applications for water or wastewater service, water or wastewater connections, and water or wastewater line extensions.

(a) *Definitions.* In this ~~section~~division:

Application means a written application to initiate service from a city water or wastewater line, an application for connection to a city water or wastewater line, or an application for extension of a city water or wastewater line, whether the water or wastewater line is within or outside the city limits.

Director means the director of the ~~water and wastewater~~ Development Services department, or the director's authorized representative.

Fair notice of the project and the nature of the development to be served by the utility service, utility connection or utility extension means a written description of the development, accompanied by sufficient written information for the director to determine all of the following:

- (1) The site of the proposed development, including its physical location and size;
- (2) The nature of the proposed development, in sufficient detail to be able to:
 - a. Determine the physical characteristics of the development (e.g., fill or excavation, building construction, public infrastructure installation or improvement);
 - b. Determine the nature and extent of public facilities or infrastructure, if any, that would be associated with or impacted by the development;
 - c. Confirm that the proposed development requires a decision, permit or approval by the city under the Land Development Code before the development is initiated; and
 - d. Confirm the manner in which the proposed development contributes to completion of the project for which the decision, permit or approval is sought, if the development is part of a larger project; and
 - e. Confirm the specific type of decision, permit or approval that is required by the city for the development under the Land Development Code before the development is initiated.

The director shall presume that an application provides "fair notice of the project and the nature of the development to be served by the utility service, utility connection or utility extension" if the application is submitted on the proper application form promulgated by the city, is accompanied by all required attachments, and reasonably appears to be complete.

Project means a development that requires a decision, permit or approval by the city under the Land Development Code before it is initiated.

Project-related application means an application for approval of a development that requires a decision, permit or approval by the city under the Land Development Code before it is initiated.

(b) *Initial review of applications by director.* The director shall review each application to determine whether it is a project-related application. If not, the director shall accept and process the application. If so, the director shall accept the application for filing only if the application gives the director fair notice of the project and the nature of the development to be served by the utility service, utility connection or utility extension. If the application gives fair notice of the project and the nature of the development to be served by the utility service, utility connection or utility extension, the director shall accept the application for filing, and transmit a copy of the application to the director of planning and development services and the director of engineering. If the director determines that an application does not give fair notice of the project and the nature of the use to be served by the utility service, utility connection or utility extension, the director shall not accept the application for filing, and shall request clarification from the applicant.

(c) *Review of applications for completeness.* The director shall review for completeness each project-related application using the procedures and criteria in section 1.3.1.1 of the Land Development Code.

(d) *Processing of applications.* The director shall process each project-related application using the applicable procedures and criteria contained or referenced in the Land Development Code.

Sec. 86.003. Water and wastewater line extensions ~~when no platting is required.~~

(a) Water or wastewater line extensions ~~to serve a use for which no platting is required~~, are subject to the following:

- (1) The extension must be of a size that conforms to the city's construction design and materials standards and the provisions of the city master plan and capital improvements plans that pertain to utility development, and the design and construction of the extension must meet all state and city regulations.
- (2) Subject to the possibility of reimbursement from pro rata fee assessments under section 86.____, ~~the~~ applicant must pay the total cost for the extension for a line up to eight inches in diameter, or the line size required to properly serve the use proposed by the applicant, as determined by the director of water and wastewater, whichever is greater.
- (3) For lines required by the city to be more than eight inches in diameter, or the line size required to properly serve the use proposed by the applicant, as determined by the director of water and wastewater, whichever is greater, the city will pay the oversizing

cost, subject to the limits and requirements of Section 212.072 of the Texas Local Government Code, consisting of the difference between the actual cost of the city-required line and the engineer's approved estimated cost for an eight inch line, or the line size required to properly serve the use proposed by the applicant, as determined by the director of water and wastewater, whichever is greater. Payment from the city will be due only after the improvements are dedicated to and accepted by the city.

- (4) The extension must begin at a city-approved point at which adequate capacity is available. Notwithstanding the foregoing, the city does not warrant or guarantee line capacity and there shall be no recourse against the city for failure of line capacity to serve the needs of any property.
- (5) Any required valves, fire hydrants, appurtenances or other equipment, appliances or improvements related to and required for the water or wastewater line must be paid for by the applicant.
- (6) The extension must be made in a public utility easement or public right-of-way. If an easement or right-of-way is not in place, it will be the applicant's responsibility to acquire an easement on behalf of the city. The form of the easement shall be subject to approval by the city.
- (7) The extension shall be made along the entire frontage of the property or development adjacent to the easement or public right-of-way in which the line is or lines are located to a point at which extensions and connections to future subdivisions or developments can be made. If the property or development is not adjacent to an easement or public right-of-way, the extension of water or wastewater lines shall be accomplished in such a manner as to allow future extensions and connections to new subdivisions or developments. If new subdivisions or developments cannot be constructed beyond the applicant's property due to physical or legal constraints, the director may waive this requirement.

(b) For wastewater extensions, the following requirements apply in addition to the requirements of subsection (a):

- (1) The depth must be sufficient to develop the city's wastewater system in conformance with the city's construction design and materials standards and the provisions of the city master plan.
 - (2) Any lift station required will be financed as follows:
 - a. The developer must pay the total cost for a system of sufficient capacity for the applicant's proposed use.
 - b. If the city determines that additional capacity is necessary, the city will pay the difference between the engineer's approved estimate of the cost to install a system sufficient for the applicant's proposed use and the actual cost of the system required by the city, subject to the limits and requirements of Section 212.072 of the Texas
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Local Government Code. Payment from the city will be due only after the improvements are dedicated to and accepted by the city.

- (3) Manholes, cleanouts, odor control facilities and other required appurtenances, equipment, appliances or improvements will be the responsibility of and paid for by the applicant, subject to city oversizing participation if applicable.

(c) Extensions of the city wastewater system will be made only if the customer is purchasing city water, unless a variance from this requirement is granted by the city council.

(d) Any necessary boring for line extensions will be at the applicant's expense.

(e) Ownership of line extensions, appurtenances and facilities will be transferred to the city upon final acceptance of the improvements by the city. Operation and maintenance of the improvements will become the responsibility of the city upon final acceptance, with the exception of any warranty items.

Sec. 86.004. Extensions and connections to city water or wastewater system outside the city limits.

(a) Applications for service connections to existing city water or wastewater lines to serve a property located outside the city limits will be granted only with the approval of the city manager. Each such application must be accompanied by a written request for annexation of the applicant's property.

(b) Applications for extension of city water or wastewater lines to serve a property located outside the city limits will be granted only with the approval of the city council. An application for approval of such an extension must be accompanied by a written request for annexation of the applicant's property. If the property is not contiguous to the city limits, the application must be accompanied by a written request for annexation of an area at least 15 feet in width from each property owner or, for public right-of-way, the entity having jurisdiction over the right-of-way, along the intended route of the line extension.

(c) Annexation requests must be submitted on forms approved by the city.

Sec. 86. . Extension of lines by city at owner or developer's expense.

(a) Request to city. In connection with an application for extension of a water or wastewater line, the owner or developer of property may submit a request to pay the city to construct a water or wastewater line to serve development on the property in lieu of construction by the owner or developer.

(b) City approval of request. The city may, but shall not be required to, construct a water or wastewater line with funds provided by the owner or developer to serve a development in lieu of construction by the owner or developer subject to any requirements of this section and any terms and conditions imposed by the city council. Before the city may construct facilities under this

section, the owner or developer shall execute an agreement approved by the city council setting forth the terms and conditions under which the city will perform such service.

(c) *Bidding and contract.* If the city agrees to extend the water or wastewater line, the city's procedures for competitive bidding and the award of contracts established by applicable provisions of the Texas Local Government Code and ordinances must be followed. The city shall not solicit bids for construction until the owner or developer has entered into a contract approved by the city council under subsection (b) and received the developer guarantee under subsection (d).

(d) *Developer guarantee.* As a condition of granting the developer's request to extend a water or wastewater line, the developer shall deposit cash or execute a payment bond or letter of credit in such form as acceptable to the city, in its sole discretion, in an amount equal to 100 percent of the projected costs of the extension, less the added cost resulting from oversizing requested by the city, if applicable.

Sec. 86. . Health and safety extensions to serve individual lots.

For paramount public purposes of health and safety, the city council may authorize the city, at its expense, to extend a water or wastewater line to individual residential areas, subdivisions or lots.

Sec. 86. . Other public purpose extensions by the city

For other lawful public purposes, the city council may authorize the city, at its expense, to extend water or wastewater lines to an approved location.

Sec. 86. . Water wells to be abandoned.

No owner or developer of property having one or more water wells may connect from such property to a city water or wastewater line unless such owner or developer first abandons the water well or wells on the property under applicable water well abandonment laws and regulations. The requirements of this section may only be waived by the city council.

**DIVISION 3. PRO RATA FEES FOR WATER AND
WASTEWATER LINE EXTENSIONS**

Sec. . Effective date.

This division shall apply only to water and wastewater line extensions for which application is made on or after October 1, 2010.

Sec. 86. . Pro rata fees to be established.

(a) *Nature of fee.* A charge known as a "pro rata fee" may be assessed against all property abutting the easement or public right-of-way in which a water or wastewater line is located and

that is eligible to be served by the line and for which a pro rata fee assessment has been requested and approved or imposed in accordance with this division. The pro rata fees collected will be used to reimburse all or a portion of the eligible costs to construct the line. The pro rata fees collected will be paid to the owner or developer that constructed the line, subject to the limitations of this division and applicable law. If the city constructs or pays any portion of the costs to construct the line, any pro rata fees collected will be paid to the city in proportion to its participation, subject to the limitations of this division.

(b) *Calculation of pro rata fee.* The total cost of the water or wastewater line, together with all appurtenances, as approved and determined by the director will be apportioned across the length of the line establishing a unit cost per linear foot. The amount of the pro rata fee assessed against any property shall be the unit cost per linear foot multiplied by the number of linear feet of the front footage of the subject property that abuts the easement or public right-of-way associated with the water or wastewater line for which pro rata fees have been authorized. If the easement or public right-of-way associated with the line is abutted on two or more sides by tracts or parcels of land subject to the pro rata fee assessment, the pro rata fee will be divided equally or proportionately between or among the abutting properties.

- (1) *Determining front footage:* Front footage is measured along the length in feet along the property line of a tract or parcel of land which abuts the easement or public right-of-way associated with the line. If the property abuts more than one easement or right-of-way, associated with a line subject to reimbursement from pro rata fees, the property shall be subject to the pro rata fee assessment associated with the line to which a connection will be made. Thereafter, the property may be subject to additional assessments associated with any additional lines to which connections are made, if any.
- (2) *Alternate fee calculation.* If the director finds that property subject to a pro rata fee assessment is so situated or shaped that applying the front footage calculation above results in an inequitable allocation of the pro rata fee assessment relative to other property in the line's service area, he or she may apply an alternate fee calculation as provided in this paragraph. The director shall establish a unit cost for the improvements by dividing the approved total cost of the improvements by the total land area of the properties eligible to be served by the improvements. The fee to be assessed against a property under this paragraph shall be the product of the unit cost multiplied by the land area of the property to be assessed.
- (3) *Equitable adjustments to pro rata fee assessments.* The director may make adjustments to the apportionment of pro rata fees assessed against a property upon a finding that, due to physical constraints of the property and any improvements thereon and/or any other legal constraints under applicable laws, rules or standards, a beneficial connection from the property to a line associated with the pro rata fee assessment cannot be made or the benefit to the property is limited to a degree substantially greater than other properties connecting to the line. Any adjustments under this subsection shall be subject to review any time a project as defined in section 86.002 (a) is initiated or an application or request for any approval or permit under the Land Development Code for the property is filed by the owner or other authorized representative or occupant thereof. After any

review of the adjustment, if the director determines that the property will benefit from the line to a degree greater than determined when the adjustment was originally approved, the city may reinstate all or any portion the pro rata fee assessment for the property.

- (4) An owner or developer that is a party to a pro rata reimbursement contract under this division shall have no recourse against the city for any failure of the pro rata fees assessed and collected by the city to meet the owner's or developer's expectations or for a reduction in the amount of fees collected to as a result of adjustments made by the director under this section or any other waivers of fees provided under this division.

Sec. 86. . Pro rata fee account.

A pro rata fee account is hereby established. The city shall deposit all pro rata fees collected into such account. The funds deposited into this account shall be used solely to reimburse the city and/or any owner or developer for the costs authorized under this division of installing water or wastewater lines subject to a pro rata fee assessment.

Sec. 86. . Request for reimbursement from pro rata fee assessments.

(a) *Developer request for reimbursement from pro rata fee assessment.* In connection with an application for extension of a water or wastewater line, but before an owner or developer begins construction of a water or wastewater line, an owner or developer may file with the city a written request for reimbursement from pro rata fee assessments.

(b) *Submittal requirements.* The request for reimbursement from pro rata fee assessments shall be submitted on a pro rata contract request form approved by the director. The request shall be accompanied by a copy of the plans and specifications for and survey showing the proposed location of the water or wastewater line and a copy of the contract for construction of the line. The request shall also be accompanied by a map or survey identifying all properties within the service area of the proposed line.

(c) *Pro rata reimbursement contract.* Upon receipt of a complete submission from the owner or developer under subsection (b), the director shall establish a maximum amount eligible for reimbursement from pro rata fee assessments. The director shall then submit for consideration by the city council a contract with the owner or developer setting forth the terms and conditions under which the owner or developer may be reimbursed from a pro rata fee assessment and the maximum amount eligible for reimbursement, less any fees, offsets and other adjustments or deductions provided in this division. The city council, in its sole discretion may approve or reject the proposed contract and in approving a contract may add such terms and conditions its deems appropriate under the circumstances.

(d) *Submission of actual cost information.* After completion of the improvements pursuant to a contract approved by the city council under section 86.____, but before the improvements are dedicated to and accepted by the city, the owner or developer shall supplement the request for reimbursement with such other information the director may request to verify the actual cost

to construct the improvements, including evidence satisfactory to the director that such cost and all subcontractors and suppliers have been paid. Engineering and similar professional, design and consulting fees may not be included in the cost to construct the improvements and are not eligible for reimbursement.

(e) *Determination of potential reimbursement amount.* Upon receipt of a complete submission of the actual cost information in subsection (d) from the owner or developer, the director shall verify the costs submitted in support of the reimbursement request. The director shall then establish a reimbursement amount and apportion such amount as a pro rata fee among the properties within the service area of the water or wastewater line in accordance with section 86. ____.

(f) *No guarantee of reimbursement.* By entering into a pro rata reimbursement contract with an owner or developer under this section, the city in no manner guarantees that the owner or developer will be reimbursed or will receive any minimum reimbursement amount. The owner or developer, regardless of the terms of any contract with the city under this section, shall have no recourse against the city based on the failure of the pro rata fees collected by the city to meet the owner or developer's expectations.

(g) *City participation in line extension.* The city shall be reimbursed from pro rata fees for its proportionate share of costs for any water or wastewater lines funded in whole or in part by the city. If a water or wastewater line is to be funded entirely by the city, the city council may approve a pro rata fee assessment using the methods consistent with this division. This section shall not apply to a water or wastewater line for which the city paid oversizing costs if the developer does not request pro rata fees under subsection (a).

Sec. 86. ____ . Collection of pro rata fees.

(a) *Obligation to pay fee.* Except as provided in this division, the owners of all properties abutting an easement or public right-of-way in which a water or wastewater line is located and for which pro rata fees have been authorized shall be obligated to pay a pro rata fee. The pro rata fee shall be due and payable before the approval of any plat or the issuance of any permit under the Land Development Code.

(b) *Waiver of fees for certain residential areas.* For extensions serving low to moderate income residential areas or properties being developed by tax-exempt non-profit housing providers or for extensions to residential areas that are required for paramount public health and safety reasons, the city council may elect, in its discretion, to exempt such residential properties served by the line from the assessment of a pro rata fee.

Sec. ____ . Disbursement of funds from pro rata fee account.

(a) *Reimbursement amount.* The developer may be reimbursed from the pro rata fee account an amount not exceed the eligible costs determined by the director under section 86. ____.

(c), less any costs incurred by the city for oversizing and any other deductions permitted under

this division. When the city participates in the oversizing of a line, the developer and the city shall each be reimbursed in proportion to their respective costs.

(b) *Offset.* Before disbursing any funds to the developer from the pro rata fee account, the city may deduct as an offset any amounts owed by the developer to the city.

(c) *Ten year disbursement period.* As pro rata fees are collected from individual property owners benefitting from a water or wastewater line, disbursements, less any deductions allowed under this division, shall be made to reimburse the costs to construct the line incurred by the developer and/or the city as applicable. Disbursements shall be made for a period of ten years after the date the completed improvements are dedicated to and accepted by the city or until such time as all pro rata fees attributable to the improvements have been collected, whichever is sooner.

(d) *Time for making disbursements.* The city shall make disbursements on its own account or to a developer, as applicable, within 90 days after receipt of a pro rata fee.

(e) *Unclaimed funds.* It shall be the responsibility of any owner or developer entitled to reimbursement from the pro rata fee account to notify the city of any change of address or other information necessary for it to receive payment. If the city is unable to reimburse a developer entitled to reimbursement from the pro rata account following reasonable attempts to locate such developer, the city shall retain such unpaid funds for a period of two years after expiration of the ten year reimbursement period. If the funds have not been disbursed within such time, the city may refund fees collected to the depositors of any pro rata fees. If any depositor cannot be located, after reasonable attempts to locate such depositors, the pro rata fees shall be transferred to the city water and wastewater fund for expenditure by the city. For purposes of this section, publication of notice regarding the unpaid funds or eligibility for a refund of such funds shall constitute a reasonable attempt by the city to locate a person or entity.

Sec. 86. . City collection fee.

On all pro rata fees reimbursed to the developer, the city shall deduct two percent of the amount collected as a collection fee. The city shall deposit collection fees into the city water and wastewater fund for expenditure by the city.

LAND DEVELOPMENT CODE AMENDMENT

Section 7.2.1.2 Location; Performance Guarantees

(a) *Location and Cost of Installation.* The location of all fire hydrants, all water supply and wastewater improvements and the boundary lines of special districts, private systems and certified water service areas, indicating all improvements proposed to be served, shall be shown on the construction plans. The cost of installing all water supply and wastewater improvements to be made by the developer, including off-site improvements, shall be included in the performance guarantees furnished by the developer.

(b) *Extension of Lines.* Extension of water and wastewater lines shall be made along the entire frontage of the subdivision or development plat adjacent to a street or thoroughfare. If the subdivision is not adjacent to a thoroughfare, the extension of utilities shall be accomplished in such a manner as to allow future connections to said utilities by new subdivisions. If new subdivisions will never be constructed beyond a developing subdivision due to physical constraints, the Director of Development Services may waive the requirement for adjacent utility line construction at the time of final plat approval and prior to construction of the subdivision.

(c) *Compliance with Other Regulations.* Installation, operations and maintenance of utilities not specifically referenced herein shall comply with regulations of the TCEQ, and with any other applicable State rules and regulations, whichever is the most stringent requirement.

(d) *Extensions Subject to Other Requirements.* Unless otherwise expressly waived by the Director of Development Services, or his or her designee, any extension of water or wastewater lines under this section shall be subject to the requirements of divisions 2 and 3 of Chapter 86 of the San Marcos City Code. The costs to the developer for water and wastewater line extensions under this section may be eligible for reimbursement from the pro rata fee account established under section 86, provided the procedures and requirements therein and the Land Development Code have been followed and satisfied.

**MINUTES OF THE REGULAR MEETING OF THE
SAN MARCOS PLANNING AND ZONING COMMISSION
COUNCIL CHAMBERS, CITY HALL
June 8, 2010**

1. Present

Commissioners:

Sherwood Bishop, Chair
Bill Taylor, Vice-Chair
Randy Bryan
Bucky Couch (absent)
Jude Prather
Curtis O. Seebeck
Jim Stark
Chris Wood

City Staff:

Matthew Lewis, Assistant Director
Francis Serna, Recording Secretary
Phil Steed, Planner
John Foreman, Planner
Abigail Gillfillan, Planner

2. Call to Order and a Quorum is Present.

With a quorum present, the Regular Meeting of the San Marcos Planning & Zoning Commission was called to order by Chair Bishop at 6:00 p.m. on Tuesday June 8, 2010 in the Council Chambers, City Hall, City of San Marcos, 630 E. Hopkins, San Marcos, Texas 78666.

3. Chairperson's Opening Remarks.

Chair Bishop welcomed the audience.

4. **NOTE:** *The Planning & Zoning Commission may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Planning and Zoning Commission may also publicly discuss any item listed on the agenda for Executive Session;*

5. Citizen Comment Period

There were no citizen comments.

6. CUP-10-11. Hold a public hearing and consider possible action on a request by Ronnie Vasquez for a renewal of a Conditional Use Permit for a hair salon at 317 N. Fredericksburg Street.

Chair Bishop opened the public hearing. There were no citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Taylor and a second by Commissioner Prather, the Commission voted all in favor to approve CUP-10-11. The motion carried unanimously. Commissioner Couch was absent.

7. PC-10-05(04). Hold a public hearing and consider possible action on a request by Lorenzo and Fidel Valadez Bros. Inc. on a replat of a portion of Block 43, Second Section, Victory Gardens and a portion of the J.M. Veramendi Survey No. 1 to create two lots to be known as Lot 1-A and Lot 2-A, Block 43, Second Section, Victory Gardens and located at 1204 and 1208 IH 35 South.

Chair Bishop opened the public hearing. There were no citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Prather and a second by Commissioner Taylor, the Commission voted all in favor to approve PC-10-05(04) with the condition that a plat note be added stating that sidewalks are required at the time of redevelopment. The motion carried unanimously.

8. ZC-10-02. Hold a public hearing and consider possible action on a request by Lumberton Investment, LTD for a zoning change from Neighborhood Commercial (NC) to Community Commercial (CC) for the property at 1211 Cheatham Street.

Chair Bishop opened the public hearing. Thomas Rhodes, ETR Development, 401 Dryden Lane, Buda, Texas, present on behalf of the owner stated he was available to answer questions. He advised the Commission that he spoke to Ana Mendoza, Rio Vista Neighborhood Representative and that she understood the purpose of the rezoning and the redevelopment of the property. There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Taylor and a second by Commissioner Prather, the Commission voted all in favor to approve ZC-10-02. The motion carried unanimously.

9. ZC-10-03. Hold a public hearing and consider possible action on a request by Lumberton Investment, LTD for a zoning change from General Commercial (GC) to Community Commercial (CC) for the property at 660 East Hopkins Street.

Chair Bishop opened the public hearing. There were no citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Prather, the Commission voted all in favor to approve ZC-10-03. The motion carried unanimously.

10. Discussion Items.

Commission members and staff may discuss and report on items related to the Commission's general duties and responsibilities. The Commission may not take any vote or other action on any item other than to obtain a consensus regarding items that will be placed on future agendas for formal action.

Planning Report

Matthew Lewis advised the Commission that staff has met with the Homebuilders Association and is scheduled to meet with the Realtors Association regarding their concerns with the Proposed Land Development Code Amendments. He explained that staff will hold an additional workshop to discuss changes prior to placing the item on the agenda. Mr. Lewis stated that the amendments would be brought before the Commission in about a month.

Matthew Lewis advised the Commission about the SmartCode Workshop to be held on Wednesday, June 9 at the Price Senior Center, 222 W. San Antonio beginning at 6:00 p.m.

Commissioners' Report

Jim Stark suggested that sections of the Proposed Land Development Code Amendments that do not have debate should be brought before the Commission for action.

11. Consider approval of the minutes from the Regular Meeting of May 25, 2010.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Wood, the Commission voted all in favor to approve the minutes from the Regular Meeting of May 25, 2010. The motion carried unanimously.

12. Questions and answers from the Press and Public.

There were no questions from the press and public.

13. Adjournment

Chair Bishop adjourned the Planning and Zoning Commission at 6:19 p.m. on Tuesday, June 8, 2010.

Sherwood Bishop, Chair

Bill Taylor, Commissioner

Jim Stark, Commissioner

Jude Prather, Commissioner

Chris Wood, Commissioner

Curtis Seebeck, Commissioner

Randy Bryan, Commissioner

ATTEST:

Francis Serna, Recording Secretary